Exhibit 9

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:	) Case No. 23-40523
	) Chapter 11
THE ROMAN CATHOLIC BISHOP OF OAKLAND	)
	) Oakland, California
	) Wednesday, December 18, 2024
Debtor.	) 11:36 AM
_____	)

1. DEBTOR'S MOTION FOR ORDER (I) APPROVING DISCLOSURE STATEMENT; AND (II) ESTABLISHING PROCEDURES FOR PLAN SOLICITATION FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC. 1453)

4. MOTION FOR ENTRY OF AN ORDER APPOINTING A LEGAL REPRESENTATIVE FOR UNKNOWN ABUSE CLAIMANTS FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC. 1503)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM J. LAFFERTY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:

ANN MARIE UETZ, ESQ.
Foley & Lardner LLP
500 Woodward Avenue
Suite 2700
Detroit, MI 48826
(313)234-2800

MARK C. MOORE, ESQ.
Foley & Lardner LLP
2021 McKinney Avenue
Suite 1600
Dallas, TX 75201
(214)999-4667

APPEARANCES (CONT'D):

For the Debtor:	MATTHEW D. LEE, ESQ. Foley & Lardner LLP 150 East Gilman Street Suite 5000 Madison, WI 53703 (608)258-4258
For Official Committee of Unsecured Creditors:	GABRIELLE ALBERT, ESQ. Keller Benvenutti Kim LLP 425 Market Street 26th Floor San Francisco, CA 94105 (415)496-6723
	BRENT WEISENBERG, ESQ. JEFFREY D. PROL, ESQ. Lowenstein Sandler LLP One Lowenstein Drive Roseland, NJ 07068 (973)597-2500
	JESSE J. BAIR, ESQ. TIMOTHY W. BURNS, ESQ. Burns Bair LLP 10 East Doty Street Suite 600 Madison, WI 53703 (608)286-2302
For Continental Insurance Company:	MARK D. PLEVIN, ESQ. Crowell & Moring LLP Three Embarcadero Center 26th Floor San Francisco, CA 94111 (415)986-2800
For Westport Insurance Corporation:	TODD C. JACOBS, ESQ. Parker, Hudson, Rainer & Dobbs LLP Two North Riverside Plaza Suite 1850 Chicago, IL 60606 (312)477-3306

APPEARANCES (CONT'D):

For Certain Underwriters at Lloyd's of London Subscribing:	BETTY LUU, ESQ. Duane Morris LLP 865 South Figueroa Street Suite 3100 Los Angeles, CA 90017 (213)689-7421
For Office of the United States Trustee:	JASON BLUMBERG, ESQ. United States Department of Justice 501 I Street Suite 7-500 Sacramento, CA 95814 (916)930-2100
Also Present:	HON. MICHAEL HOGAN Mediator
Court Recorder:	DA'WANA CHAMBERS United States Bankruptcy Court 1300 Clay Street Oakland, CA 94612
Transcriber:	MICHAEL DRAKE eScribers, LLC 7227 N. 16th Street Suite #207 Phoenix, AZ 85020 (800) 257-0885

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OAKLAND, CALIFORNIA WEDNESDAY, DECEMBER 18, 2024 11:36 A.M.

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THE CLERK: Calling line item number 10 for the Roman Catholic Bishop of Oakland, Case Number 23-40523.

THE COURT: Okay. Let's start with appearances in the courtroom, please.

MS. UETZ: From the table is okay, Your Honor, or --

THE COURT: For now.

MS. UETZ: Thanks. Ann Marie Uetz of Foley & Lardner on behalf of the debtor.

THE COURT: Okay.

MS. UETZ: I have with me Bishop Barber, as well as Attila Bartos, our chief financial officer, with me in Court as well.

THE COURT: Very good. Okay. Thank you so much. Okay. And you're presenting the argument?

MS. UETZ: I'm presenting the argument, Your Honor. I'm going to request that I share parts of it with my partners, but I'll address that with the Court when I can.

THE COURT: Well, do you want to -- should they state their appearances now?

MS. UETZ: Oh, they -- I would like them to, yes.

THE COURT: Okay. Are they on the Zoom or are they here?

MS. UETZ: They're here.

THE COURT: Okay.

MS. UETZ: Thank you.

THE COURT: They can go ahead and do that.

MR. MOORE: Your Honor, Mark Moore and Matt Lee from Foley & Lardner on behalf of the Roman Catholic Bishop of Oakland.

THE COURT: Okay.

MS. UETZ: Also with us is Shane Moses.

THE COURT: I see Mr. Lee lurking in the shadows there. Okay.

MR. LEE: Thank you, Your Honor.

THE COURT: All right. Hi, Mr. Moses. Nice to see you.

Okay. Other side of the room?

MS. ALBERT: Good morning, Your Honor. Gabrielle Albert, Keller Benvenutti Kim, on behalf of the committee.

THE COURT: Okay.

MS. ALBERT: I will let Mr. Lowenstein introduce himself.

THE COURT: Mr. Lowenstein? Now that is a field promotion, right? Mr. Lowenstein. That's rare.

MR. WEISENBERG: Your Honor, I'll --

UNIDENTIFIED SPEAKER: If Mr. Lowenstein wasn't here today --

MS. ALBERT: I just caught that.

THE COURT: I've always wanted to be Mr. Jerry Falk (phonetic), but it never happened that way. So too bad. Okay.

MR. WEISENBERG: Having been a name partner, I'm now going to retire.

THE COURT: Yeah.

MR. WEISENBERG: And I'll leave Mr. Prol to argue.

Your Honor, Brent Weisenberg of Lowenstein Sandler on behalf of the committee. Your Honor, we also would ask your indulgence to allow myself and Mr. Prol, as well as Mr. Burns and Mr. Bair in the event insurance issues come up.

THE COURT: Sure. Thank you.

MR. WEISENBERG:

THE COURT: Sure, sure, sure. Okay.

MR. PROL: Good morning, Your Honor. Jeff Prol of Lowenstein Sandler also for the committee.

THE COURT: Okay.

MR. BAIR: Good morning, Your Honor. Jesse Bair, Burns Bair, special insurance counsel for the committee.

THE COURT: Okay.

MR. BURNS: Good morning, Your Honor. I'm Tim Burns.

THE COURT: Okay. Anybody else in the gallery who expects to make a presentation today?

MS. UETZ: Excuse me, Your Honor. I would note that we have Matthew Kemner here as well. Who is counsel to the

bishop. We don't expect he'll make a --

THE COURT: Not. Not for Foley & Lardner.

MS. UETZ: Want to highlight him. Correct.

MR. KEMNER: Good morning, Your Honor. Matthew Kemner.

THE COURT: Okay.

MR. PLEVIN: Good morning, Your Honor. I don't know if I'll be saying anything, but Mark Levi, on behalf of Continental Insurance Company.

THE COURT: Okay, great. Nice to see you.

MR. PLEVIN: Thank you.

THE COURT: Thank you.

MR. JACOBS: Good morning, Your Honor. Nice to see you again. Todd Jacobs on behalf of Westport Insurance Corporation. And I'm here with my partner, Harris Ginsberg.

THE COURT: Okay. Good morning.

MR. JACOBS: And Blaise Curet.

THE COURT: Okay. Very good.

MR. JACOBS: I don't know if we'll have anything to say today or not.

THE COURT: Okay.

MR. JACOBS: We'll see.

THE COURT: Okay.

MR. JACOBS: Oh, you bet. Okay.

MR. SCHIAVONI: Judge, Tanc Schiavoni for Pacific.

And I have my partner, Steve Warren.

THE COURT: Right.

MR. SCHIAVONI: I don't think I'm going to say anything. But the one thing I would like to say is just to express our appreciation to the mediator judge who worked so hard on this.

THE COURT: Okay. Thank you very much. Okay. All right. Anybody else in the courtroom? Okay.

How about on the Zoom?

MS. LUU: Good morning, Your Honor. Betty Luu on behalf of the certain London market insurers.

THE COURT: Okay.

MR. BLUMBERG: Good morning, Your Honor. Jason Blumberg for the United States Trustee.

THE COURT: Okay. All right.

Well, Ms. Uetz, it's your motion. If there's something that you want to begin by way of an opening statement, I'm happy to hear it. I have some thoughts. And I'm happy to go second. So if there's anything you want to lead off with, feel free.

MS. UETZ: Your Honor, if it please the Court, my comments may be informed by yours. And so I'm happy to go second.

THE COURT: Okay. All right. Okay.

MS. UETZ: It's your show. Thank you.

THE COURT: Well, no, it's all of our show.

MS. UETZ: Well, it's all of us.

THE COURT: Okay.

MS. UETZ: But we take direction from you.

THE COURT: Thank you.

MS. UETZ: Thank you so much.

THE COURT: Let me make the following comments. And this -- when we had the discussion, the sort of scheduling discussion a few weeks ago in light of the committee's request that I consider matters that they believe to be quite important, and I'm sure they believe to be not just important in the progress of the case but also related to disclosure statement issues, I did separate them out. And I did indicate that I wanted to begin with this as a disclosure statement hearing.

Having said that, everybody in this room has been through enough disclosure statement hearings to know that in a process as complicated and dynamic and iterative as the bankruptcy confirmation process, there are a lot of different ways to, shall we say, handle a disclosure statement here. There are a lot of things that can come up in connection with this beginning of this process. And for me, it is the beginning. You've all been at this a long time. You know what your negotiations have been like. You know what accommodations have been made and haven't been able to be made yet. And you

probably have an idea of where you think this ends up in a month or two or three. But this is the beginning of the process for me.

So let me give you the following thoughts. Well, let me let me begin with a point that I want to get out there not because I'm cynical, but because I think these cases are a little different. To the extent that a disclosure statement is a document prepared by the proponent of a plan that is to aid people voting on the plan in making an intelligent decision about this, without meaning to be too cynical, these cases may play out a little bit differently in the sense that we could -- my guess is, on some level, we could have a vote tomorrow. And the people who are here know how they're going to vote.

So part of this reality is, this is not as much about convincing people who are unsure what to do as it is in some ways about making sure that everybody who cares about this has a chance to contextualize this process in a way that they think is important so that the information is out there, whether it necessarily changes their mind or not. I think that there is a perfectly valid purpose to a disclosure statement that is supplemental to am I going to convince somebody to vote one way or the other. I think we are making a record in all kinds of ways with this, beginning with the disclosure statement. And I think that's important.

So even though one could say, do you really need to

add that because the committee has formed a conclusion about the plan that isn't favorable, and if we voted on it, I know how they vote? Okay, you could say that. I still think that it's important enough to begin this process and continue this process in as comprehensive a way as we can so that, to the extent it's necessary to the process that all voices are heard, all voices are heard. So I hope that's sensible as a beginning of a contextualization.

So if we treated this -- if indulging that notion, we, for lack of a better word, treated this as a disclosure statement hearing, it seems to me there's typically three buckets that you put things in. The first bucket is somebody says you really need more information about X or Y or Z or the description isn't clear or we need to clarify something, or sometimes and it may be very relevant here, there is a very important constituency here that has a very different view of something and that should be -- that view should be exposed as well as the proponents view. So there's a bucket of issues that fall into that. And there are a few of those today.

There are sometimes matters that are so clearly not going to work that you don't want people going to the trouble of soliciting acceptances or rejections based on something that you flat out know or the judge believes is not going to be an appropriate approach or one that's going to be consistent with 1129(a)(1) et seq., as interpreted by the case law.

And then there's the third piece. And the third piece is things that people feel very passionately about and are convinced they're going to win an argument about factually and legally at confirmation. But you don't look at it as today it's a showstopper. If they're right, yeah, it is. But between the robustness of that third category, which is not quite you could never get there but there could be some serious problems here, between that and the notion that this is a dynamic situation and that a lot of things could happen here, including there could be further conversations, including that I may -- I'm not trying to give anybody a heart attack, I may well grant a motion for relief from stay in two weeks to start testing some of the things that are being discussed here, I may well require there to be considerably more disclosure about some of the transactions that predated the bankruptcy, which may lead to further discovery issues, may lead to further litigation issues.

And I would certainly want to take account of how I fold in is another question. I certainly want to take account of the committee's idea that they simply have a very different idea about this case and what the principles are that should be guiding what the assets are available and what the claims are to be paid.

All of that, I think, is part of a dynamic that even if I don't say I'm going to stop the presses right now because

of those disagreements, I think they have to be in the front of our minds the whole time.

So that's my sense of this. Now, where we -- my recollection is that the exclusivity re solicitation is through January 8th. All right.

Look, it's not -- let me throw another idea out there. If it turns out that we don't approve a disclosure statement today, and I think probably we're looking at some amendments and some clarifications and we're coming back at some point is my sense, but we'll see, if we don't there's a big difference to me between extending out somewhat the solicitation deadline so that we get to an agreement about what this thing ought to look like for solicitation purposes and when we have a confirmation hearing. Those things don't have to be linked up by twenty-eight or thirty-five days. There's a lot of play in the joints there as far as I'm concerned. Once we get to -- if we get to a angle of repose on what the disclosure statement ought to look like, we can time a lot of other things according to what the parties need to do and what they think I need to be mindful of and the possibility of further discussion and all the other things you're already knowing I'm not saying, okay?

So that's where I begin this process. Is that helpful? Okay. Doesn't surprise you?

MS. UETZ: No.

THE COURT: Other than I may not approve it today.

MS. UETZ: Not surprised by that.

THE COURT: Well, no, you're entitled to say I'm shocked by that, Judge. Okay. All right.

How would you folks like to proceed? I mean, I don't want to interfere in the way you want to present the motion. But in my mind, we can start with any one of those three buckets, or you can organize it differently in your own mind. If you need a few minutes, given what I've said, to think, we can take five minutes. Up to you.

MS. UETZ: Your Honor, if it pleases the Court, I have about six minutes of an opening statement that I would like to make --

THE COURT: Sure, sure.

MS. UETZ: -- that touches on some of what you said.

THE COURT: Yeah, I'm not surprised.

MS. UETZ: And then I will land with your last question.

THE COURT: Okay. All right.

MS. UETZ: Is that okay?

THE COURT: Are you ready now?

MS. UETZ: I am.

THE COURT: Okay. Come on up.

MS. UETZ: Thank you.

THE COURT: Um-hum. If I were timing you.

MS. UETZ: Well, Mr. Lee kept interrupting me when I

was practicing, so it was between six and seven minutes. All right.

THE COURT: All right. We'll allow you to go over budget by ten percent. Okay.

MS. UETZ: Thank you, Your Honor.

THE COURT: All right. No problem.

MS. UETZ: Thank you very much.

And good morning. It's still morning.

THE COURT: Yeah. It's still morning.

MS. UETZ: May it please the Court?

THE COURT: Yeah.

MS. UETZ: Just a quick note. We are here today on actually two motions that are scheduled. It's the motion to approve the disclosure statement as well as the debtor's motion to appoint a legal representative --

THE COURT: Right, right, right, right.

MS. UETZ: -- for unknown abuse claimants.

THE COURT: Right.

MS. UETZ: It goes without saying, but I will say it, Your Honor, today represents a critically important milestone for the parties and stakeholders in this Chapter 11 case.

Since filing this case some nineteen months ago, the debtor has been consistent in pursuit of its stated goal. And I've stated this goal repeatedly: One, to provide a fair and equitable compensation for survivors of sexual abuse; and two,

to reorganize the debtor to enable it to continue its mission to do its charitable work and serve the needs of the faithful, including parishioners and including the poor, within the Diocese of Oakland and the counties which it serves, Alameda and Contra Costa primarily.

These two prongs are the focal point of the plan that the debtor filed with this Court. The committee complains that Bishop Barber did not propose the plan in good faith. We believe this is belied not just by his actions throughout this Chapter 11 case, some of which you have seen firsthand, some of which will be described to the Court during this process. It is also belied by Bishop Barber's actions before we filed Chapter 11, through his leadership and work to prevent future abuse of minors and to help ensure child protection, reconciliation and healing for sexual abuse survivors. Bishop Barber is attempting to do here what the diocese can do in accordance with the Bankruptcy Code to achieve the two goals that we have repeatedly described.

We believe the disclosure statement adequately describes a plan which establishes a survivor's trust funded by the debtor and non-debtor contributing entities. Of course, the debtor believes the plan is fair and equitable and that the payment to the survivors trust is significant, meaningful, and fair, and compares favorably to already confirmed plans and other diocese cases.

Your Honor, I've previously expressed to this Court, I think I do it nearly every time I'm here, that it is our strong preference to reach a global settlement in this case. And that remains the debtor's preference. But we are where we are.

The debtor worked tirelessly with the committee and the insurers toward a global settlement during mediation sessions throughout 2024. Bishop Barber has been committed to the debtor's goals in this Chapter 11 and to that process to try to reach a global resolution. Unlike some of the members of the committee and some employees of the insurers, Bishop Barber attended mediation sessions in person. He wasn't required to by the mediators. He was there trying to reach agreement, trying to get consensus for a plan.

Bishop Barber has been transparent throughout this case. He approved the production of information and documents requested by the committee. And you've repeatedly heard about that. What the committee now complains about, and as just one example, the transfer of assets to the Oakland Parochial Fund prior to the filing, which funded the administrative costs of this Chapter 11, the burn of about 1.2 to 1.3 million dollars per month to pay professionals and other costs for this Chapter 11, that was fully disclosed since day 1. That's just one example, Your Honor.

THE COURT: Well, it wasn't described in the disclosure statement. Now maybe you thought, well, it's been

discussed elsewhere. But the rationale for it wasn't described.

MS. UETZ: And --

THE COURT: That's a point that we may pause on later, okay?

MS. UETZ: To Your Honor --

THE COURT: And by the way, none of this suggests I think there's something nefarious here. The disclosure is always sort of in the eye of the disclosure, right?

MS. UETZ: Sure.

THE COURT: Okay.

MS. UETZ: And to your point earlier -- and look, we're under no illusion.

THE COURT: Yeah.

MS. UETZ: Based on your comments and based on our experience, there will be changes to the disclosure statement --

THE COURT: I bet there will.

MS. UETZ: -- before it goes out.

THE COURT: I bet there will.

MS. UETZ: Right?

THE COURT: Yep.

MS. UETZ: Better than my Lions bet last weekend, one of which I made by mistake and the second one which --

THE COURT: Well, did you have the over or the under?

MS. UETZ: I mistakenly pushed under, Your Honor. It was a disaster.

THE COURT: It was a bad bet. Yeah, it was a bad bet.

MS. UETZ: Your Honor, Bishop Barbour agreed to the -- again, consistent with trying to move toward resolution, and then I'll move on, he agreed to the committee's request for the two survivor conferences which have been conducted. He didn't have to do that. We embraced it. We cooperated with it. And he was here. And he expressed his sincere and unequivocal sorrow and regret to the survivors.

Again, unfortunately, we are where we are with the committee for a variety of reasons. But nonetheless, we are in Chapter 11. And Bishop Barber has been able to propose a plan which pays abuse survivors in line with other dioceses, Chapter 11 cases. And it provides with the agreement of the insurers, which was reached in mediation the day before we filed, November 7th, for the complete assignment of insurance rights for the benefit of the survivors of sexual abuse through a transfer to the trust of the rights and obligations of the debtor to its insurance policies and providing a direct right of action to the claimholder to each survivor to decide for him or herself. It is the survivor's choice under this plan, not the committee's, not the trustee of the survivors trust, not anyone's choice but the individual survivor, so that under the plan, if a survivor wants to have his or her day in court, they

can. We've heard that repeatedly through this case. They don't have to, but they can.

THE COURT: I have to say, it's not as if any part of the disclosure statement was tossed off lightly. But the provisions about the litigation option and about the continuing rights of the nonsettling insurers, I thought without indicating approval or not, because that's not important right now, they were very, very, very clearly thought through with enormous detail. And I get that. And everybody will comment on that. But it was -- that was a particular place where it was clear people were spending a lot of time thinking that through, because I think, among other things, there have been cases where when those issues have not been so carefully thought through and things come up post-confirmation, it's never a good result. So just an observation. Nothing more than that.

MS. UETZ: Your Honor, we've heard loud and clear throughout this case that the rights of the survivors are very important. And we felt it very important in this provision to give that choice to the survivors. And I will say we thank Judge Newsome and Mr. Gallagher who were extraordinary in bringing some of the parties together on those points.

THE COURT: Well, I know the committee probably has a different idea. And we'll certainly hear that too. So that's fine. Okay.

MS. UETZ: Your Honor, the plan does not -- this is what it does not do. Plan does not pay sexual abuse survivors the amounts the committee claims might be awarded by state court juries in California or elsewhere, nor do we purport to do so. We are a debtor in a Chapter 11 case administered pursuant to the Federal Bankruptcy Code. And in accordance with the requirements of the Federal Bankruptcy Code, the debtor's plan in this Chapter 11 case, we believe, provides fair and equitable compensation for survivors of sexual abuse and reorganizes the Roman Catholic Bishop of Oakland to enable it to continue to serve the needs of the faithful and to continue its mission within the community.

Much of the committee's objection to the disclosure statement is premised on really three things. We think whether the plan is fair and equitable, whether it was proposed in good faith, whether the debtor can satisfy the best interest test. And we'll get to the committee's other objections.

But in short, Your Honor, I think even the committee would agree with me that their objection is that the debtor is not giving enough.

Your Honor, added to that is that despite the committee's repeated statements to this Court from the earliest days in this case that it wanted for its constituents an assignment of the debtor's insurance rights, it now objects to that when we've given the choice to the survivors themselves.

Your Honor, there will be a day when this Court decides whether the debtor has given enough and whether the insurance assignment, which has been which has been confirmed in other cases, is appropriate here. Of course, that day will come.

But first we need to get the disclosure statement approved. We need creditors to vote on the plan. And ultimately, as the judge in this case, you will decide whether the debtor has met the requirements for confirmation.

The committee's objection filed with this Court, we believe, can really be distilled into two buckets. One is specific objections to specific statements, kind of like one of your buckets, Your Honor, about statements that are either included or not included in the disclosure statement. And we've addressed those in our reply in a chart we attached as an appendix and incorporated into the reply.

The committee also, I put this in the second bucket, makes broad objections to the plan, arguing essentially it's patently unconfirmable.

Additionally, and this touches on some of what Your Honor mentioned in your remarks, through its objection, the committee -- Your Honor didn't say this. That might have been a poor choice of an intro, but it relates I think. The committee toward the end of its objection I think in the final section seeks to delay the schedule for confirmation of the

plan. And of course, that doesn't need to be decided today. But I would just note that it appears that the schedule that the committee is suggesting in light of the lift stay and six state court cases going to trial in state court is two-plus years.

Of course, this isn't a disclosure statement objection. It may or may not be a plan objection. We do believe that it's a pretty transparent attempt by the committee to leverage the debtor and the insurers into a better plan, into a better deal. And I get that.

The issue, and I've been plain about this more so recently, is one of time we don't have the money to pay the burn to stay in Chapter 11. We've shared the cash forecast with the parties. And we are running out of money. And that will be something that's addressed before this Court in fairly short order as well in more detail. So when we get to talking about the schedule and what lies ahead, if the plan is to run out the clock on the debtor's ability to pay the Chapter 11 administrative expenses associated with this case, that may happen.

Finally, Your Honor, not to be overlooked, the United States Trustee has filed its objection to the disclosure statement. We believe that many of those objections are really plan objections and not disclosure statement objections. And we don't think that the UST's objection rise to the patently

unconfirmable level, nor do we think the committee's do.

There are some technical objections which the United States Trustee has made which, I believe, can be worked through, so to speak. And I don't think that they would be an ultimate bar to approval of the disclosure statement.

And of course, the UST, as expected and projected, objects to the opt-out third-party releases, arguing they are non-consensual and they violate the Supreme Court's decision in Purdue. We believe the law supports the debtor's position on that issue in a way that will support approval of the disclosure statement as we work through that argument with the Court.

In terms of how to proceed, Your Honor, in light of what you've described and our own thoughts one idea -- and we could put this over if the Court prefers, but one idea is to just get through the motion to appoint the future claims rep because he's on the Zoom, and it probably won't take long. I don't believe there have been any objections to that motion, if my memory is accurate And then address the committee's specific objections regarding what the disclosure statement does and does not state, the chart if you will, then proceed to the committee's broader objections, and then to the United States Trustee's objections because some of those we believe will have been addressed through our discussion about the committee.

And finally, Your Honor, as I mentioned earlier, if it please the Court, I will need the help of my partners in these arguments. So I have Mr. Lee, Mr. Moore, and Mr. Moses here. I also have my insurance partner or partners, I'm not sure, available by Zoom.

And Your Honor, with that, we truly thank the parties, all of the parties, and the Court for your and for their consideration.

THE COURT: Okay. Thank you.

Would it make sense to have the committee make a similar opening statement? Do you want to do that for theme purposes? Mr. Weisenberg, it's up to you.

MR. WEISENBERG: Sure. Your Honor. typically I --

THE COURT: if you want to defer it and have us take up the --

MR. WEISENBERG: Your Honor, Brent Weisenberg on behalf of the committee.

I think it will be helpful. Typically, I enjoy when Your Honor asks questions and we can think through problems collectively. But I do believe that, given some of the comments that were made, a retort is required. I will not go point by point.

THE COURT: Sure. Okay.

MR. WEISENBERG: I will do my best to stick with why we're here today.

THE COURT: Okay. And if it's okay, I don't want to -- because I think there should be some immediacy between the two statements. If at that point we want to take up the probably unopposed motion with the rep, that's fine, okay? Does that work for folks? Okay. But I don't want to delay you. Go ahead.

MR. WEISENBERG: Thank you, Your Honor.

Let me start in reverse order, such that I believe we should use the initial part of today's hearing to determine whether the plan is confirmable. We've set forth in great detail that we believe the plan is dead on arrival. Whether that be because of the definition of release or exculpation or the admitted failure not to follow the hypothetical liquidation test, any one of those three reasons makes the plan, within its four corners today, unconfirmable. And so there's no reason to go through what is or is not missing in the disclosure statement, what may be misleading. We'd prefer to focus on the plan.

And Your Honor, that kind of ties in to our case vision. And that has been used against us in many ways, as if it's nefarious, that we have an idea about how this case should unfold. Your Honor, we want this case to unfold logically and linearly. What do I mean by that? We have fundamental disputes with the debtor about what is and is not assets of the estate. We have fundamental disputes about the value of

claims. We do not believe this case can move forward, decisions can be made until those issues are resolved.

It ties into the entire problem with the disclosure statement. Like Your Honor has already observed, there is no discussion in the disclosure statement about 106-million-dollar transfer on the eve of bankruptcy. Until Your Honor has an opportunity to decide that, we don't know if those funds are property of the estate and potentially available to pay creditors or they're not.

The same issue lies with respect to the relationship between the non-debtor entities and the debtor. We're talking about hundreds of millions of dollars that essentially divide us regarding what's available to pay creditors. And so we're continually tagged with the notion that we're running out the clock, we're trying to drive expenses. Nothing could be further from the truth, Your Honor. In every one of our pleadings -- not every one, but we'll say half, we make mention of the fact that every day, survivors' memory fades and survivors pass away. We want resolution immediately, but we want a fair and equitable resolution for all survivors.

And Your Honor, fair and equitable doesn't mean what the debtor tells us what it means. And that's what this plan is. The debtor has said we filed this case to treat survivors fairly and equitably, and we've decided that this plan is fair and equitable. They say that at the same time by saying that

two fundamental protections that the Bankruptcy Code provides, the absolute priority rule and the hypothetical liquidation test, are inapplicable to this case. So think about that. The two fundamental protections that prevent a debtor from unilaterally deciding what it could pay creditors in this case would be removed. The ramifications of allowing that, Your Honor, would essentially allow a debtor to determine what it thinks is fair and deprive creditors of those vital protections.

And so, Your Honor, we think it's important that we go through this case, again, logically and linearly. Let's talk about what is and is not asset to the estate. And through the lift stay, let's find out what these cases are really worth. The insurers and the debtor and the committee have vehement disagreement about that.

Well, how do we solve for that? Why don't we allow an actual jury to determine what these cases may be worth or may not be? And so if that's going to be tagged with the notion that we're running out the clock, then so be it, Your Honor. But we would submit that it's a better path forward than if we stay on this course and in three, four, or five months from now, you find the plan is not confirmable for any number of reasons, what have we achieved? We haven't figured out what are assets to the estate. We haven't figured out the valuation of claims. And so we're starting from scratch. That seems to

make little sense.

We would submit that our way, our proposed way, actually drives this case to resolution, because once Your Honor makes a decision about these fulcrum issues, the parties are going to know what the playing field is. And they'll be able to mediate within those confines. But standing here today, we have diametrically opposed views.

THE COURT: Can I make an observation?

MR. WEISENBERG: Of course.

THE COURT: This is probably very simplistic, but it strikes me that there's two pieces to what you just said. One piece is a complicated legal question of whether entities that are separately incorporated really should be deemed to be -- I mean, I don't want to say liable for these claims, but there should be a world in which we think of them as essentially owning assets that are available to pay or should be made to be available to pay claims. Okay? That's the lawsuit, right? That's the adversary proceeding?

MR. WEISENBERG: Correct, Your Honor.

THE COURT: Okay. That's complicated. And we'll talk about how that might play out.

The other piece of this where I'm kind of searching for how to articulate it best, to the extent that the diocese says we are the diocese, within the diocese, there are churches there are different sorts of entities for purposes other than

whether our assets are theirs -- I don't think there's not an explicit disagreement that a church asset is a diocese asset. But within that, we're making a decision how much of that is available. And I think part of that -- I mean, that goes to the question of, well, if you couldn't liquidate us because we're a nonprofit and you couldn't replace the bishop for First Amendment reasons, does that mean we have no obligation to make these assets available?

What I'm searching for is a world in which the debtor tells us why that's the case. What is the rationale for why this is available? And that is, what is the limit? And there's a lot of ways they could express that. And just to get this on the table, I'm not seeing that in the disclosure statement yet. And maybe the debtor can tell me if they think that's totally inappropriate. But it seems to me at a minimum, some articulation of why on a principled basis X is available and Y isn't is something that I think we need to know because you're not going to agree -- we need to know why we disagree about that. So, I mean, that's just an observation. We'll get into that when we get into the particular objections, okay? Does that distinction make sense?

MR. WEISENBERG: Your Honor nailed it for two reasons. Number 1, if the debtor's argument is correct, today they can take every last dollar of cash, buy a piece of property, improve it with a church and say, under the First Amendment,

you cannot compel us to sell a church, ergo we don't need to make any payment to creditors, or taken a step further, they can say every last dollar within the diocese is in furtherance of our religious purposes and therefore we don't need to pay anything, because if you could -- if you try to compel me to pay one cent, you're violating my First Amendment, right?

THE COURT: But my --

MR. WEISENBERG: That can't be the answer.

THE COURT: No. But my point, I think you agree with me, is that what we need is that articulated. What is the basis for that? And then we can agree with it or disagree with it. The debtor can say not another penny because X, Y, and Z, or the debtor can say, well, this asset is different from that asset, and here's why.

But the point of a disclosure statement ought to be, among other things, to give the debtor, the proponent, the ability to articulate why they're doing what they're doing, what you're going to get, and why that's fair and legally supportable. And I think there's -=- my sense is there's a void there right now. I have a sense -- I may guess what the debtor is thinking, but I think that's a point where some articulation would be helpful.

And I mean -- and I'm at the moment indifferent to the answer. I mean, whatever they say, you're probably going to take a different position. That's fine. But I think for

today's purposes, what we need is to have them tell us more clearly what that means. Does that make sense?

MR. WEISENBERG: Your Honor, it does. Suffice it to say that our position is a debtor does not get to pick and choose what is and is not part of its estate and available to pay creditors and survivors. We think, again --

THE COURT: Well --

MR. WEISENBERG: -- the fundamental protection of the Bankruptcy Code was this hypothetical liquidation test. Let's think about from a --

THE COURT: Can I --

MS. UETZ: -- drafter's perspective.

THE COURT: Can I agree with you real fast? Because it is hypothetical, that's the point, because it is hypothetical.

Having said that, they have a point that they cannot be liquidated, and we're not going to replace the bishop. But I don't have to confirm a plan either, right? I mean, that's the stark reality here. So I mean, somewhere in there, there has to be some articulation of what their theory is, and you have to be able to say we disagree with it because. Fair?

MR. WEISENBERG: Your Honor will not be the first person to be asked this question. The court in Boy Scouts was asked this question.

THE COURT: Yeah.

MR. WEISENBERG: The court in Camden was asked this question.

THE COURT: I'm glad I'm in good company.

MR. WEISENBERG: And in our papers, we put forth at least six or seven cases in which going through the 1129 factors, every one of those courts made a decision about whether the plan was confirmable based upon whether the plan proponent fulfilled this test. So, Your Honor, suffice it to say, I think we see it very closely to the way you see it.

THE COURT: But having said that, it may also be true that I think that the purpose of today and whatever continued hearings we have is to get the debtor to articulate that, not to decide whether it's enough or not, right? Whether it's enough or not is a -- in my view now, subject to your brilliant arguments, whether it's enough or not is a confirmation issue.

MR. WEISENBERG: Your Honor, it's the first time I've ever been accused of a brilliant argument. But with that aside --

THE COURT: You got to get out more.

MR. WEISENBERG: Your Honor, we will submit that the hypothetical liquidation test as proposed by the debtor makes the plan patently confirmable.

THE COURT: Okay. All right. Okay.

MR. WEISENBERG: Okay.

THE COURT: Okay.

MR. WEISENBERG: Just a few more points, Your Honor.

THE COURT: No, no. I'm not trying to rush you. I'm just trying to make sure that you understand where I'm coming from, okay?

MR. WEISENBERG: I'm going to get a little out of my depth by addressing the insurance assignment. And I know that I have great counsel behind me if I get it wrong.

THE COURT: Okay. Okay.

MR. WEISENBERG: But the bottom line is this, Your Honor. The debtor stands up and says the committee has always wanted this. That may or not -- may or not be true. However, I'll tell you what we don't want. We don't want an assignment that increases the rights of the insurers and decreases the rights of the survivors, okay?

The fact that all the insurers are here today, Your Honor, that should tell you everything you need to know about this plan and how it's viewed between the debtor and the insurers and the committee, okay? If past is prologue, the insurers typically do not stand in favor of an assignment that is not insurance-neutral, okay? In this case, we'd submit it actually impairs the rights of survivors in the state courts. And so whether or not we want an assignment, I can tell you this. We don't want one that hurts survivors' rights.

THE COURT: I know we'll get into this. Is that because of the sort of, for lack of a better word, the credits

and the offsets that are available or the limitations on the recovery, or what's the --

MR. WEISENBERG: Your Honor, I'm going to --

THE COURT: Just thematically, what's the font of that?

MR. WEISENBERG: I want to answer your question, but then I also would like my colleagues to answer.

THE COURT: Yeah.

MR. WEISENBERG: We do make an argument, and again, this is a patently unconfirmable argument, that the plan as drafted allows the insurers an offset for any amount that a survivor may have received from the debtor. However, the plan provides the debtor is paying survivors for the uninsured exposure that they may have for any claim. And so

THE COURT: So those are apples and oranges.

MR. WEISENBERG: Exactly. Under California law, that simply -- the insurers are not entitled to an offset.

THE COURT: Okay. I got it. I got it. I got it. Okay. I don't need more now unless you guys are dying to tell me, okay? All right. Okay.

MR. WEISENBERG: Let me end in this way, Your Honor. Maybe this is the good news. We share the debtor's desire to consensually resolve this case. We earnestly do. And everything we've done so far has been towards that goal.

THE COURT: Yep.

MR. WEISENBERG: It's unfortunate that sometimes the debtor doesn't see it that way. For example, we truly believe that the survivor status conferences were vital to bringing survivors under the tent. And hopefully they will support a consensual plan. Okay? So that's the good news. We want to continue to work there. But given our vehement disagreements about fundamental problems, we just submit there's a better, more economic way.

THE COURT: Okay. I appreciate it.

MR. WEISENBERG: Thank you, Your Honor.

THE COURT: Thank you very much.

Can I make a suggestion? Just so we don't keep anybody who could otherwise be off doing something more fun, do you want to take up appointment issue?

MS. UETZ: We'd like to take up the appointment issue and then suggest we break, Your Honor.

THE COURT: I'm thinking the same thing. And before we break, I want to give you an idea of where I'd like to start when we come back, okay?

MS. UETZ: That would be helpful.

THE COURT: Great.

MS. UETZ: Yes, Your Honor.

THE COURT: Okay. Okay. Come on up, Ms. Lee.

MR. LEE: Thank you, Your Honor.

Good afternoon, Judge Hogan.

We're here today on the debtor's motion to appoint -- in addition to all the disclosure statement talk we're going to have, we're here on the motion to appoint Judge Michael Hogan as the unknown abuse claims representative in this case. The motion was filed on December 9th as docket number 1503, supported by declarations at dockets 1504 and 1505. Your Honor agreed to hear it on short notice.

THE COURT: Yep.

MR. LEE: Sorry, short notice, with the consent of the committee and the U.S. Trustee. Objections were due on December 13th. None have been filed.

This motion acknowledges, as has been done in many other dioceses in Chapter 11 bankruptcies, that there may be individuals who have abuse-related claims against this particular debtor whose claims have not legally accrued under California law or, for whatever reason, have not had notice of these proceedings. This would be related to abuse that occurred or is alleged to have occurred before the effective date of the plan and in which case is appropriately dealt with in these proceedings.

Recognizing that holders of current known abuse claims may have slightly different interests than holders of claims who either don't know they have a claim under California law or don't have -- haven't had a chance to assert that claim in this bankruptcy, the debtor proposes to appoint Judge Hogan as a

representative for those unknown abuse claimants in this Chapter 11 case. Judge Hogan is very experienced in this role. He served in over a dozen diocesan bankruptcies.

THE COURT: In the same role.

MR. LEE: In the same role. Yes, Your Honor.

THE COURT: Okay.

MR. LEE: He's a former federal judge. He currently has a mediation practice that's active. He has proposed to charge 850 dollars an hour to the estate, with a cap of 100,000 total dollars, all in.

THE COURT: Even post Post-effective date?

MR. LEE: I believe that's correct.

THE COURT: Okay.

MR. LEE: He has no conflicts that would prevent his disinterestedness under Section 101 -- sorry, Section 101.14 of the Bankruptcy code.

THE COURT: Okay.

MR. LEE: And after all, this is -- at bottom, it's at 327(a) representation. He would be representing not the debtor, but he would be representing a constituency of the estate. And therefore I think it's appropriate to proceed under 327(a).

THE COURT: I'm guessing he's probably dealt with a lot of the same parties, but that's not -- I mean, that's not even a connection you would tell me, right, within the

disclosure requirements?

MR. LEE: I believe he's dealt with the same -- he's been involved in cases with --

THE COURT: It would make sense that he had. Yeah. Okay.

MR. LEE: Yes. Yes, Your Honor.

THE COURT: Okay.

MR. LEE: His tasks are outlined specifically in the motion.

THE COURT: Yeah.

MR. LEE: I can go through them if you like. But I do know that he's able and willing to do all of this immediately upon entry of the order we've proposed to Your Honor.

THE COURT: Okay.

MR. LEE: If you have questions for me or for Judge Hogan, I would invite you to ask them.

THE COURT: Yeah, This may be one of those questions that can't be answered, but just given that he's -- Judge Hogan, given that you've done this a number of times before, empirically, when do these issues arise? I mean, are there people that you would be identifying now or be aware of now Who would be your constituents or your flock, or is that something that's going to develop over time, It's not a now issue?

MR. HOGAN: Develops over time. We don't know who those people are yet.

THE COURT: Yeah. Okay. All right. And Judge Hogan, obviously, you've read the application. And you're familiar with the presentation. Anything you want to add at this point?

MR. HOGAN: Well, the only other thing I would like to do is apologize for my dress today.

THE COURT: I've been known to let people know that without a tie, I'm not hearing them the same way. But go ahead. That's all right.

MR. HOGAN: My finest rodeo vest.

THE COURT: Okay. I appreciate that. I appreciate that. All right. Thank you.

MR. HOGAN: I'll dress in big boys after close-out.

THE COURT: All right. Thank you very much. Well, listen, you may be perfectly well attired for most of what you're going to be doing, which won't be talking to me. Lucky you. Okay? Yeah. All right. All right.

Does anybody want to be heard on the application with respect to Judge Hogan's appointment? I think the understanding was the given it was shortened time, if someone had a comment, I wouldn't stop them from the lectern, okay?

MR. PROL: Good afternoon, Your Honor. Jeff Prol, Lowenstein Sandler, for the committee.

THE COURT: Good afternoon.

MR. PROL: Judge, the committee has no objection to the application for the retention of Judge Hogan. Judge Hogan

and unknown claim representatives have been instrumental in other cases in driving consensus. And we're hopeful that that by him coming and being involved, that that will be a result here.

We do, however, object to the proposed use of Judge Hogan in the plan as it presently stands. And I could address that now, or I can address that later.

THE COURT: I read your papers. Does that cover it?

MR. PROL: Yes, Your Honor.

THE COURT: I got it. Thank you.

MR. PROL: Okay. Great.

THE COURT: Thank you very much.

MR. PROL: Thank you, Your Honor.

THE COURT: Okay. You're welcome.

Okay. Anybody else want to be heard? Okay. Then the debtor is proposing the appointment of a Judge Hogan as the unknown abuse survivors representative, correct? Okay. Hearing no objection and hearing from Judge Hogan -- thank you very much for participating today -- and hearing from the debtor's representative and counsel, that's approved. Okay? Thank you very much.

MR. HOGAN: Thank you for your time.

THE COURT: All right. Yeah. Okay. I hope to see you again. Okay. Thank you.

We'll take a break. But when we come back, you may

not agree with me, but one thing I do want to address fairly early on is the release opt-in, opt-out question, because I think that's a big part of how we're going to solicit or not hear. So I think that's a big deal. And I have some -- I have some thoughts about that, okay? And I will give you those thoughts. We can have a conversation. I will leave -- I will, I suspect, leave open something for somebody to inform me slightly better on. But you're going to -- you're going to get where I'm coming from, I promise you, okay?

After that, I have probably -- I've probably condensed and hopefully not dumbed down categories where I think some expectation, amendment, amplification is probably a good idea. And that would include the possibility for the committee, if appropriate, to just say we have a different view. Here's appendix A, this is our view. And we'll talk about those, okay? That's how I would like to start the afternoon session. And that's subject to anybody having a better idea. And I mean that sincerely. If anybody thinks there's something we need to do first, that's fine. But that's how I'd get going if it's okay, all right?

How long do you folks want?

MS. UETZ: Thirty minutes.

THE COURT: That's all. Seriously? Does anybody want longer than that?

MS. UETZ: Well, that's all I want. But if other

people want more --

THE COURT: Okay. No. I mean, I will leave it -- I'll leave it to you guys.

UNIDENTIFIED SPEAKER: Judge, I think we'll defer to you. Your staff is obviously here, and you folks need lunch as well. And whatever you typically do --

THE COURT: How about 1:15?

UNIDENTIFIED SPEAKER: -- that would be fine with us.

THE COURT: How is 1:15, okay?

MS. UETZ: Thank you, Your Honor.

THE COURT: 1:15. All right. Thank you very much. Thank you.

(Recess from 12:27 p.m., until 1:16 p.m.)

THE COURT: Okay. Please be seated.

So one housekeeping note. I don't want to predict that we will go this long, but I think 5 was going to be a hard stop for us, okay? So if we can -- not that that's something to shoot for, but it is a limit.

I also will note, echoing I think everybody's comments about the relentless goodwill that has prevailed in this case, that this case is the furthest advanced of the diocese cases in ND Cal

I'll tell you a secret. Montali complains all the time that nobody argues about anything in his case. He doesn't know what to do with himself. It's a very quiet case

apparently, in his view at least. And Santa Rosa, I think, is mediating but not yet to a plan. And you probably -- many of you probably know this better than I do. And my case, Franciscan Friars, is not close to a plan, I don't think.

So somebody has their hand up. It looks like -- is it Mr. Manz (phonetic)?

MR. MANZ: It is, Your Honor. Good afternoon.

THE COURT: Good afternoon. Something you want to tell me?

MR. MANZ: Just to make a note of an appearance, Your Honor.

THE COURT: Sure.

MR. MANZ: I had an issue making an appearance at the outset. I represent RCC and RCWC.

THE COURT: Okay.

MR. MANZ: Thank you.

THE COURT: Thank you so much. Okay.

MR. MANZ: Thank you to your chambers as well.

THE COURT: You bet. Okay.

If there's anything that you guys need to tell me from a housekeeping or order progression standpoint, now is the time. Otherwise, we'll segue to one issue that I think we should just deal with and largely dispose of, which is the opt-in release, opt-out release question, okay?

So I'm prepared to -- I think the committee may have

something to say about this. I wouldn't say it was their prime focus, but they may well have some comments. But certainly the principal objection came from the U.S. Trustee. So I would let them kick us off on this.

MR. BLUMBERG: Thank you, Your Honor. Jason Blumberg for the United States trustee.

Our objection -- our primary objection in our papers is that the third-party release and the channeling injunction is not consensual because of the opt-out procedure. And under the opt out-procedure, as I understand it, creditors would be deemed to consent if they don't respond to the solicitation package for whatever reason. Creditors would also be deemed to consent if they fail to execute an opt-out form even if they reject the plan. So from our perspective, what the debtor is proposing is that silence or inaction will be deemed consent to a third party release in this case.

Now the debtor's reply brief, excuse me, acknowledges that there is a case to support every view on this issue. I can't disagree with that. But what I did not see in the debtors papers was any Ninth Circuit authority permitting opt-out releases.

It's the United States Trustee's position that the Bankruptcy Code does not deal with third-party releases, consensual or otherwise, or how parties actually consent to a release. Thus, as we set forth in our objection, it's our

position that whether a release is consensual or not should look to state contract law. And under that law, which is well developed, except in exceptional circumstances, an offeree has no duty to respond to an offer -- excuse me, respond to an offer.

So the first bucket of creditors or releases that we would have take issue with are those who don't vote and don't return --

THE COURT: Can I put a thought in there before we get to the particulars?

MR. BLUMBERG: Of course, Your Honor.

THE COURT: I mean, some people have also commented that the contract scenario is arguably different because there's a difference between acceptance and consent. So if you want to at some point address that, I'd be grateful.

MR. BLUMBERG: Sure. Your Honor, as I mentioned, there's a case to support every view. The cases that we relied upon, the Smallhold case, the Sun Energy case, and the case out of the Northern District of New York, the Tonawanda Coke case, they defaulted to contract principles. We think that's the appropriate result because there is nothing in the Bankruptcy Code that deals with this issue.

And in essence, a plan is a contract between the debtor and between the creditors that resolves the debts between those two parties. This is a separate piece of the

plan. This is essentially a contract between the non-debtor and the creditors. So it could exist outside of the plan entirely.

THE COURT: Well, okay. But it's the debtor that's the proponent and is going to get the benefit of getting a confirmed plan if this plays out the way they like.

I don't know that -- also, I hear you on some courts adopting the contract theory. I don't know that that's how I would have characterized Goldblatt's opinion. I think it's a little different. But you can convince me why I'm wrong about that one.

MR. BLUMBERG: Well, I respect Your Honor's take on the Smallhold case. But I would just note that Judge Goldblatt, I think, did at least refer to the contract principles in determining that --

THE COURT: Okay.

MR. BLUMBERG: -- silence can't be consent --

THE COURT: Right.

MR. BLUMBERG: -- with creditors who don't participate in the plan.

THE COURT: Well, yeah. I mean, the place where I think he really balked was this notion that if you don't respond at all, you're agreeing to whatever I say. I mean, you're going to -- unless you give me this form back, you're going to pay for my college education I think it was this hypo,

right?

MR. BLUMBERG: That's correct, Your Honor.

THE COURT: Right. Which I think speaks to a lot here. He would -- if I read him correctly, he would be in accord with this form that the debtor is suggesting but for the notion that if you don't respond at all, you are deemed to consent, right? I think he drew the line there.

MR. BLUMBERG: Agreed, Your Honor. He would --

THE COURT: Okay, Your Honor.

MR. BLUMBERG: Agreed, Your Honor.

THE COURT: Okay. So if you want to -- if you want to -- I don't mean to derail you. If you want to tell me why the contract theory in all its robustness is the right one, I'm all ears. I don't think -- that's not the way I read about Goldblatt was doing it. I usually find him pretty persuasive on issues like this. So go ahead.

MR. BLUMBERG: Well, Your Honor, I would just note that there are other cases that we cited --

THE COURT: Yeah.

MR. BLUMBERG: -- the contract theory --

THE COURT: I agree. You're right. There are. Okay.

MR. BLUMBERG: And just taking the buckets of creditors who would be deemed to consent, I think the easier case are those who just don't participate in the process at all. And set forth in our objection, there's no duty for a

creditor to vote on a plan. Moreover, we cited a BAP case called Long M. Arabians (sic), which is 103 B.R. 211. It's an old BAP decision, but there the BAP held that a creditor's silence or failure to vote is not the equivalent of the acceptance of a plan. And so if a creditor's failure to vote or decision not to vote is not acceptance of a plan, it can't be acceptance of a release in that plan.

THE COURT: Okay. Anything else?

MR. BLUMBERG: Well, just the more difficult bucket are the folks that do vote --

THE COURT: Yeah.

MR. BLUMBERG: -- that do vote.

THE COURT: Okay. How do you -- did you address whether it's appropriate to have the release be part of the ballot or whether a separate document is better or worse?

MR. BLUMBERG: We did, Your Honor. We did in the context of creditors who vote to reject the plan but don't execute the opt-out. In our view, there's case law that suggests -- I think it was the Chassix case that suggests if you have someone who rejects the plan, imposing the additional requirement of an opt-out is nothing more than a trap for the unwary or inattentive creditor. In our view, that issue is magnified here because the ballot is a separate document.

THE COURT: Okay.

MR. BLUMBERG: Easy to overlook in that circumstance.

THE COURT: Okay. I appreciate it. Thank you. Okay. Why don't I -- why don't I let the committee -- I don't think this is their principal objection, but they may have some thoughts. And they may be anticipating some of the things you're going to say about why this is -- given the number of counsel involved for the victims, they may have a thought about whether they agree with you that this is not so God awful a scenario, for lack of a better word, okay?

Okay. Mr. Weisenberg or Mr. Prol, you want to give me your thoughts?

MR. WEISENBERG: Brent Weisenberg on behalf of the committee.

Generally speaking, Your Honor, we have not weighed in on this issue with a caveat -- well, two caveats. Number 1, in the context of this plan, which is nonconsensual, we don't believe that the form that the debtor has chosen is appropriate. That is not to say in a fully consensual plan under different facts, the answer might be different.

THE COURT: Okay.

MR. WEISENBERG: Number 2, Your Honor --

THE COURT: Can I -- Okay. You finish, and I'll ask you a question.

MR. WEISENBERG: Number 2, Your Honor, you always chart your own path. And that's been very beneficial. But I do want to let you know what happened in Syracuse.

THE COURT: Okay.

MR. WEISENBERG: In Syracuse --

THE COURT: Is that Judge Kinsella's case?

MR. WEISENBERG: Yes.

THE COURT: Yeah.

MR. WEISENBERG: And in that case --

THE COURT: We've spoken.

MR. WEISENBERG: Okay. And so we would submit that that's the better course of action for the same reasons we've been telling you, which is if we get five months down the road and ultimately you issue your decision which makes the debtor's plan unconfirmable, we won't have made any progress. And so isn't it better to know now what the rules of the game are, and then we can engage with creditors in that fashion?

THE COURT: Okay. I was wondering if you were going to pick up on her rule 23 points.

MR. WEISENBERG: I was not, Your Honor.

THE COURT: Okay.

MR. WEISENBERG: I wasn't going to get into that depth. I was just talking procedurally.

THE COURT: Okay. Okay. As in we should cross this bridge now?

MR. WEISENBERG: Exactly.

THE COURT: I agree with you. Okay. Thank you very much.

Okay. Mr. Moses, come on up and --

MR. MOSES: Can I ask one quick point of clarification, was that we should cross this bridge now or we should not cross this bridge now?

THE COURT: We should.

MR. MOSES: Yes. Okay.

THE COURT: I think it's an important issue. I think it's discrete enough that it can be dealt with now. I think that the options are also limited enough that we can deal with it now, although I'm thinking to hold something -- potentially hold something open for you to further convince me on one point. I haven't made up my mind about that.

But I think that if we're talking about going out to solicitation sometime around January, if we are lucky enough to be doing that, I don't want to solicit in a form that someone is going to tell me later we never should have done. So that's my thinking, okay?

MR. MOSES: Certainly, Your Honor. And I think to start with that point, this really breaks down into sort of two kind of distinct issues. One is -- and especially when you look at it in terms of what the solicitation look like, one of those issues is can opt-out -- can an opt-out be deemed consensual, or is opt-in the -- as the U.S. Trustee argues the only possible means of consent?

And then the second question is if the Court agrees

with, know what at least one bankruptcy court, the Robertshaw court said was the overwhelming majority of cases that at least in some circumstances as to some creditors opt-out as appropriate, what is the extent of that? In other words, does it apply to creditors who vote against the plan and don't opt out? And does it apply to creditors who do not respond?

THE COURT: To what extent am I limited in Robertshaw by Lopez's opening comment that the Supreme Court didn't change a darn thing about how we look at this in the Fifth Circuit? And I have an interpretation of that history in the Fifth Circuit. And therefore, I come to the following conclusion.

MR. MOSES: Well, I think there is some relevance there in that -- and we discussed this a little bit in our papers, that the Supreme Court was very clear that this was not intended, that its decision in Purdue was not intended to call into question or to address the question of what is deemed consent. And the argument that the U.S. Trustee is making here that consent specifically requires an opt-in, an affirmative opt-in, would mean -- the effect of that is that now Purdue would result in the erasing of all of that precedent on all of those prior decisions. I think Robertshaw says hundreds of plans have been confirmed in the Fifth Circuit on this basis.

THE COURT: I don't know that he took that seriously when he said it. But anyway --

MR. MOSES: I don't know. I doubt he counted.

THE COURT: Yeah.

MR. MOSES: But I think it's fair to say a substantial amount of --

THE COURT: Well, no. I mean, whether you got --

MR. MOSES: Yeah.

THE COURT: -- a hundred plans or not, it is something to say this is inconsistent with the result of hundreds of cases. That is enough to pause, right?

MR. MOSES: Right.

THE COURT: Okay.

MR. MOSES: And I think what both Robertshaw and to some extent, the LaVie Care Centers case --

THE COURT: Yeah.

MR. MOSES: -- both suggest is that if we take this argument that opt-out is -- opt-in is required to its conclusion, then the result is Purdue does something that the Supreme Court in Purdue specifically said it wasn't doing, which was to upset current law on what is consensual and what's not consensual.

THE COURT: Or if you're putting this on a spectrum, to weigh in on what you might think of as the most onerous end of the spectrum, right?

MR. MOSES: Correct.

THE COURT: If they're saying we're not commenting on this, it wouldn't follow that, oh, and you have to do the most

difficult thing in order to get to consent, right?

MR. MOSES: Right, exactly.

THE COURT: Okay.

MR. MOSES: Exactly.

THE COURT: Yeah.

MR. MOSES: I do -- to sort of with regard to that spectrum, the decision that we really do have to resolve, not if the hearings continue today, but at this stage, is what does the form look like that we send out. Is it appropriate to send out an opt-out form? The question that Your Honor could decide at this stage, but does not have to, is whether or not the release would apply to creditors. So if it's balloted, solicited as an opt-out plan, whether or not the release would apply to creditors who simply don't respond, right? In the Smallhold decision, that was decided actually post-confirmation. We point to a couple of other cases where that was decided at least at the confirmation stage because it doesn't affect the solicitation. It just affects the nature of the release.

THE COURT: Well --

MR. MOSES: I'm sorry, the nature of the form.

THE COURT: Okay. I might argue with that --

MR. MOSES: Yeah.

THE COURT: -- in a minute, but okay.

MR. MOSES: Okay. I would like to -- and I think

that's -- Smallhold recognizes I think in addressing that issue that there's a little bit of a distinction between the procedure and the substance --

THE COURT: Oh, yeah.

MR. MOSES: -- of the release, right?

THE COURT: Oh, yeah. Oh, yeah. Yeah.

MR. MOSES: And so the procedural question is essential to solicitation. The substance in some ways may not be. That that's my only point. But I'm happy to address it all.

THE COURT: Okay.

MR. MOSES: Before we get to -- there's sort of a fundamental issue of what the correct legal framework is. Is the correct legal framework contract? Is it something else? But a number of the cases also address that there is a contextual question. And this is what I think Your Honor mentioned earlier. The contextual question in a specific case of what might be appropriately deemed consent in that case.

And in particular, one of the -- the Tonawanda Coke case that the U.S. Trustee references -- no, I think it was actually the Chassix case, they raise this issue of there is a high likelihood of inadvertence. Is there a trap for the unwary here? And the circumstances of this case are very distinct there in that, as we point out, approximately ninety-nine of these claimants are represented by counsel. Their

claims were filed by counsel. There were four claims, one of which was untimely, that were not filed by counsel.

So these notices are going to their counsel. There is almost no chance of inadvertence or a trap for the unwary or, frankly, of someone not responding because they simply don't understand the question because they have counsel to address that for them.

And although, as Your Honor mentioned, the Spokane case, it addresses the Rule 23 question. It also specifically makes that point as well, that one of the bases for an opt-out being appropriate is the fact that in that case, it was ninety-four of the creditors were represented by counsel. So I think it's just important to contextualize this.

THE COURT: Yeah. No, no, no.

MR. MOSES: And I think the LaVie Care Centers case makes that point as well.

THE COURT: Okay.

MR. MOSES: That the context is important in deciding whether or not there was consent.

THE COURT: Okay. And just as I remember it, what Judge Goldblatt said was, look, I can see this as a principle. I don't know that it's really relevant here or not based on what I have in front of me. And Judge Kinsella, I thought, was a little more convinced that it was a vibrant concept in her case. Is that fair?

MR. MOSES: I think that's fair.
THE COURT: Okay.
MR. MOSES: Yeah.
THE COURT: And is there another case that you think advances that theory beyond that, or is there another case that is more robust than its acceptance of Rule 23?
MR. MOSES: I don't --
THE COURT: I don't think so. Okay.
MR. MOSES: I don't think so, no.
THE COURT: And what are we -- what are we -- if that's something I should be worried about, is there a -- is there a order of proof that I need to be thinking of along those lines? Or what do I -- what do I do? I'm thinking about that.
MR. MOSES: Well, I don't think I'm really arguing the Rule 23 point as a basis.
THE COURT: Well let me -- can I interrupt --
MR. MOSES: Sure.
THE COURT: -- and tell you that my very strong inclination is to agree with Judge Goldblatt and I think you. But at the point that one has engaged on this and has participated enough to deal with a ballot, I think that is -- I will agree with Judge Goldblatt that the failure to check an opt-out at that point is hard to describe as anything other than you didn't want to do it, although you might -- there

might be some inadvertence there. But I think his argument that that's very different from the if you don't respond, you're paying for my college tuition. And it is consensual enough that one has participated enough to engage with the ballot, that -- I think I'm with you that I would agree that somebody returning a ballot, not checking the opt-out under the arguments advanced in Smallhold I would think is going to be sufficient.

Where I'm going to disagree with you, subject to whether we need to have some sort of evidentiary basis for this, is what I'll call the Rule 23 principle, that it just is not -- if what we're guarding here is purely inadvertence, I'm not sure that's right. But if we are, that there should be some argument based on -- I'm not sure what yet, but you can help me with that, when we get to that point in our next hearing on this, if you want to expand and engage with the committee whether -- basically because of the high level of representation here, I shouldn't be as worried about ballots simply not returned. I'm willing to keep that crack open, but I'm not -- I'm dubious about the notion.

MR. MOSES: Okay.

THE COURT: Okay?

MR. MOSES: And I think there is a little bit of a distinction, Your Honor, that in the Spokane decision, the court focused in the Rule 23 argument on the notion of the

creditors' committee as the equivalent of a class representative.

THE COURT: Yeah.

MR. MOSES: But I think --

THE COURT: Well, and they can respond to that and say we are or we aren't.

MR. MOSES: Right.

THE COURT: I haven't heard from them yet, so we'll see.

MR. MOSES: But there is a slightly distinct that the court in Spokane also addressed the question of simply these creditors are represented by their state court counsel who can identify this issue, make sure they don't miss it, explain --

THE COURT: Well, so you --

MR. MOSES: -- to them what it means.

THE COURT: You've kind of hit on this, but I don't know that we're -- if I should be looking at this in terms of making findings and so on. I don't think I'm in a position to do that if it presents that way, okay?

MR. MOSES: Okay.

THE COURT: Sensible?

MR. MOSES: Right.

THE COURT: I agree with you it doesn't have to be an opt-in. I'm going to agree with that.

MR. MOSES: Okay.

THE COURT: Okay?

MR. MOSES: I think the point I would want to identify with regard to Smallhold and where I think the LaVie Care Centers does, I agree with the point that is made there with regard to -- and with regard to Smallhold is Judge Goldblatt seemed, I think, to have the sticking point of what is the limiting principle of this.

THE COURT: Yeah.

MR. MOSES: And that's where the college tuition comes in. And the LaVie Care Centers directly addresses that and says there are limiting principles that can apply to that, right? There is -- for one thing, that is an agreement, the example of the college tuition, this sort of -- the extreme example is an agreement to an affirmative act to contribute money to this college fund. What we're talking about is effectively a waiver of a right, a waiver of the right to pursue this claim, which in many cases can be accomplished through inaction, can result from inaction.

And the other point is that there is always backstops of fair and equitable and good faith for any plan. I don't think there's any bankruptcy court in the country that would say -- require people to contribute to the CEO's college tuitions --

THE COURT: Well, I -- in good faith.

MR. MOSES: Right?

THE COURT: I agree. No. I think what Goldblatt was trying to recognize was it's contractual in the sense that you have to -- there has to be some manifestation of something that you call assent. But we all know that when we're dealing with courts, rights are highlighted, notice is given, and you've got to do something.

MR. MOSES: Yeah.

THE COURT: So there's got to be a balance between those concepts. But that's where I think he was trying to get to in my view.

MR. MOSES: Right, right.

THE COURT: Okay.

MR. MOSES: And I guess I do want to make -- sort of identify -- there's a question. The U.S. Trustee raised this issue of whether or not it needs to be a separate -- should be a separate form or whether or not it should be part of the ballot that, to the extent the Court is approving, the opt-out concept does need to be addressed.

THE COURT: Yeah.

MR. MOSES: We proposed it as a separate form because, frankly, we thought that was more conspicuous to have a separate form that says do you or do you not consent to this?

THE COURT: Yeah.

MR. MOSES: And it's called out in the ballot. If the Court disagrees with that and thinks it's more appropriate to

put it in the --

THE COURT: I do.

MR. MOSES: Okay.

THE COURT: I mean, I think one could conspicuously highlight the title, ballot and form of release, as in don't forget that. There are ways to handle that. But I think one document is -- I mean, by the logic of where Goldblatt ended up, I think one form is better than two.

MR. MOSES: Okay.

THE COURT: Okay?

MR. MOSES: And so I guess I understand -- do I understand where the Court is on this, that --

THE COURT: Opt-in is not required.

MR. MOSES: Okay.

THE COURT: Opt-out is okay. Where I -- returning a ballot without indicating the opt-out, at the moment at least, I'm agreeing with Goldblatt that that's enough engagement to count. And that where I'm differing from you at the moment is no action whatsoever equals opt-out. I'm not with you there. Okay?

But if you -- I mean, if you think that something Rule 23ish and some sort of proof about that or argument about that is appropriate, I think it's really only been kind of preliminarily raised here. If you think that that's ripe for discussion, more ripe for discussion when we come back to talk

about the disclosure statement, I'm not opposed to that, okay?

MR. MOSES: Understood, Your Honor.

THE COURT: Because I think the committee really needs to be heard about that if we're going to -- if we're going to sharpen that question. I'm not going to decide that. I'm leaning against no responses as a yes, but, well we can explore that further, okay?

MR. MOSES: Okay.

THE COURT: All right.

MR. MOSES: Understood. Now --

THE COURT: Thank you.

MR. MOSES: I guess my question, there are a number of other objections in the U.S. Trustee --

THE COURT: Yeah. I mean, if you want --

MR. MOSES: It might make more sense to sort of tackle the other larger issues and come back to that, but I'm flexible.

THE COURT: Well, my inclination on the derivative fee question is that that's -- we can argue about that at confirmation. That's not going to be ripe until you got a plan to confirm and monies to pay. And it seems as if there are decent arguments on both sides of that. I don't think that should long detain us right now. I'd certainly hear the U.S. Trustee. And I expect you both -- you can raise it further then. You can amplify your arguments then. We can get to that

then. I don't think it's something we have to decide now. It's not a showstopper for disclosure statement purposes in my mind.

MR. MOSES: I agree, Your Honor. I think it's completely appropriate to address that at confirmation.

THE COURT: Yeah.

MR. MOSES: We might come to some narrowing --

THE COURT: That's fine.

MR. MOSES: -- or agreement. You never know.

THE COURT: That's fine. That's fine. Was there another issue?

MR. MOSES: Okay. There were a couple of other. Well, those that was the other patently unconfirmed argument.

THE COURT: I remember it, yeah.

MR. MOSES: There were a couple of other small -- well, not necessarily small, but a couple of other disclosure issues. There were the question of whether we disclosed sufficient information regarding the churches and the basis for the discharge of the churches. That I think might tie --

THE COURT: We're going to get -- we're going to get there.

MR. MOSES: Whether we provided adequate information regarding the survivors trust --

THE COURT: That we're going to get to.

MR. MOSES: -- that I think we might get to. Then

there was whether we provided adequate disclosure of who the recipients of the release are.

THE COURT: We're going to get there too.

MR. MOSES: So we're going to get there.

THE COURT: We're going to get to those.

MR. MOSES: And then finally, there was an objection that we didn't identify the obligation for post-confirmation reporting in the planner disclosure statement. I don't think that really needs, frankly, Your Honor, to be in the disclosure statement. We acknowledged that we'd be happy to put that in the plan --

THE COURT: Yeah.

MR. MOSES: -- the next time the plan is revised.

THE COURT: That's what I expected you'd say.

MR. MOSES: Okay.

THE COURT: Okay. Thank you.

MR. MOSES: Thank you, Your Honor.

THE COURT: All right. Appreciate it.

Okay. Mr. Blumberg, anything else? I think I'm with you on a major point there, and you're hearing me. And we can -- we'll take -- if we need to take up the no response issue again, we can, but I'm with you on that one, okay?

MR. BLUMBERG: I appreciate, Your Honor. And I would just note very quickly on the Rule 23 issue that obviously Rule 23 doesn't -- applies in adversary proceedings but doesn't --

THE COURT: Yeah. I agree. I agree.

MR. BLUMBERG: And in the (indiscernible) case, the committee was a plan proponent. So I don't think we're even at the stage --

THE COURT: Okay.

MR. BLUMBERG: -- actually where that could work.

THE COURT: Okay, okay. Fair enough. Okay. All right.

I thought the next step would be some version of going down matters where I think we're talking about amplification amendment, putting things in the disclosure statement that aren't there right now, or giving the committee a chance to draft their own version of what they believe on some of these points. If anybody wants to proceed differently, tell me.

MS. UETZ: Not proceed differently, Your Honor. I'd just like to make one comment to the Court if I may.

THE COURT: Um-hum.

MS. UETZ: Thanks, Your Honor. Ann Marie Uetz on behalf of the debtor.

The debtor -- well, we're going to -- we're going to receive Your Honor's direction. But I just want to make clear, debtor supports and is fine with the committee attaching its appendix A as you suggested. And we'll be talking --

THE COURT: Well, that's just one idea.

MS. UETZ: That's just one. But I just want to say

we're fine with that.

THE COURT: Yeah.

MS. UETZ: I would also just comment that as to at least some of the things that you mentioned this morning and some of what we anticipate in terms of amendment, we have already prepared some version of that. And we will, following this hearing, share it with the committee and other stakeholders here and try to bring some consensus around those issues. So I just -- we're prepared to make those amendments. Some of them are already drafted, ready to go. And I just wanted to offer that to the Court.

THE COURT: Okay. Well, would it be most efficient to start with those?

MS. UETZ: I mean, the two that really come to mind, they're kind of easy ones I think, is litigation that's been filed since we filed the disclosure statement. We've got that ready to go.

Another one that occurred to me during the break was the subject of OPS. And you said that the transaction that was completed pre-petition wasn't disclosed. And we have that. So those are the two that really come to mind. And I just wanted to kind of convey the spirit to the Court and to the others in the courtroom.

THE COURT: Okay. Thank you very much.

MS. UETZ: You're welcome.

THE COURT: Should we just proceed with the objections by Mr. Weisenberg and your responses?

MS. UETZ: Well, I was -- if there are other areas of amplification that the Court was willing to direct on, we would love to hear that --

THE COURT: Yeah.

MS. UETZ: -- because I think that will help with the argument back and forth and --

THE COURT: Yeah.

MS. UETZ: That's always helpful.

THE COURT: Yeah. Okay.

MS. UETZ: Thank you.

THE COURT: Can I give you -- can I give you some thoughts? Is that okay?

MR. WEISENBERG: Sure.

THE COURT: Okay. Some of these are -- I'm going to try not to overstate them, okay? To the extent we are writing to an audience of abuse survivors, I realize we're writing to their lawyers too, but I very much appreciated the initial description of the plan in what was I think intended to be relatively easy-to-understand language.

I do think that there was a little bit of a mix-up in the beginning between and among the exculpation release and channeling injunction concepts. And I think you can tell that when you look at the language of who's getting what, I think

it's a little jumbled. It might be helpful to just tell people who don't otherwise know what this stuff means that in some circumstances, parties may make contributions that are beyond the debtor's resources. And those parties may want to be released, okay? And that's the thesis. That's the basis for this, is those parties have done something that is helpful, increases the distribution allegedly. I mean, maybe there are fights about whether it's material or not. And that on that basis, it's not inappropriate to ask parties to consent to a release.

Because the Ninth Circuit has made such a big deal about the difference between releases and exculpations, I think a quick statement about why an exculpation is appropriate is a good idea, not just the language of the exculpation, but just participating in this process may -- in good faith may entitle one to ask for an exculpation so that one's good-faith actions taken in connection with the creation proposal, blah blah blah, of a plan and the reorganization process. Those actions may be protected. So the following types of entities may ask for that.

Because I think we do get into some -- I don't think this was intentional, but when we start talking about affiliates and entities of that type, we do start giving some purchase, I think, to the committee's concept that this is way broader than it ought to be, okay? And then we have to be very

careful about that. But I think step 1 is just explaining in a paragraph why there's a basis for a release, why there's a basis for exculpation, who's entitled to that maybe, and what you're going to be asked to do about, you, creditor, are going to be asked to do about that, okay?

I think the channeling injunction is -- I don't know that you can describe it any clearer than it is. The idea is that once this becomes effective, the request is that all requests for relief go strictly to that source and no other, okay?

MS. UETZ: And, Your Honor, if I may.

THE COURT: Yeah, um-hum.

MS. UETZ: You were highlighting at the beginning of your statement the -- I'll call it the introductory executive summary.

THE COURT: Yeah, yeah.

MS. UETZ: We also have an FAQ.

THE COURT: Yes.

MS. UETZ: And I just mentioned that because it could go in both. It could go in one or the other.

THE COURT: I think it should go in both.

MS. UETZ: Okay. Thank you.

THE COURT: Okay? I think it should go on both. So that's -- again, I'm going to hear -- the committee will have more to say about this than I am. But these are my 10,000-foot

areas where I think we could do a little good here, okay? I do think -- again, I think the scope of the relief with respect to the release and the exculpation can be described a little more precisely than it is.

Now I'm going to get into a big subject here, which is the survivor trust documents. I'm going to hear from both of you, but I think it's going to help enormously if those can be ready by the time we're soliciting, okay? Do you want to address it now.

MS. UETZ: We have a draft that we can share with everybody to work toward that, Your Honor.

THE COURT: Okay. Well, no. If that was -- if you were to tell me that's completely --

MS. UETZ: Just (indiscernible) --

THE COURT: -- unrealistic, I'm happy to hear it.

MS. UETZ: -- to everybody else.

THE COURT: Okay. Okay. All right. This is going to sort of cover a couple of different concepts, but the debtor, to their credit, set forth, for lack of a better word, benchmarks in terms of what they think the overall claim aggregate is going to be.

I think there's two concepts there. One is from the committee's standpoint, those were your choices. They would make different ones. I would leave open the possibility either that the committee -- that that's appendix A, that the

committee says, well, wait a minute, if you really want to look more comprehensively at where cases have turned out or what the realistic, estimable values are, we think the following cases are more helpful than the ones the debtor has suggested. And they can also go on to say, and by the way, we're asking the Court to grant relief from stay so we can get a more particular handle on this so people know that that's a distinct possibility.

Now, we may have to be updated. Depending on what I do on the 8th, we may update that further. But I think the I think the committee ought to be heard in that sense that they just do not agree with the frame the debtor has put on this, and their frame would be very different, and they can say what it is.

Similarly, I think that, although I think there was an admirable effort to make the valuation process clear, I don't know if you can say anything more about what you think the basis for the evaluators, both the initial one and then the neutral -- if you have any idea about on what they're going to be basing that, I think you could say so.

MR. MOORE: So, Your Honor, Mark Moore, on behalf of our RCBO.

This is one of the things that's actually governed almost exclusively by the survivor trust documents, which may solve that problem.

THE COURT: Well, at least it'll tell me what you think.

MR. MOORE: Right, because part of the survivor trust documents is going to be the trust distribution protocol.

THE COURT: Okay.

MR. MOORE: And that will set out the exact --

THE COURT: Okay, okay.

MR. MOORE: -- here's the scoring metrics.

THE COURT: Yeah.

MR. MOORE: Here's the possible things taken into consideration.

THE COURT: Yeah. I mean, I don't want to get ahead of myself here. You may believe that plans have been confirmed or disclosure statements have been approved without that. As I look at this from the perspective of an abuse survivor, I just think it's going to be enormously helpful to have that information.

MR. MOORE: As Ms. Uetz said, this is something we've been working on. We are prepared in the next day, week, however long, to be able to share that with the committee.

THE COURT: Okay. Okay.

MR. MOORE: Part of the reason that we did not previously is that typically the survivors trustee has a pretty significant amount of --

THE COURT: Sure, sure.

MR. MOORE: -- input into that.
THE COURT: Sure.
MR. MOORE: As does the claims reviewer, which is a different --
THE COURT: Is there somebody identified yet?
MR. MOORE: We have not.
THE COURT: Okay.
MR. MOORE: That's typically something that's done in connection with the committee.
THE COURT: Okay.
MR. MOORE: Obviously, we haven't reached that step.
THE COURT: Yeah, I would hope so. Okay.
MR. MOORE: And so we can put those documents together with the understanding that it establishes a framework pursuant to the plan and disclosure statement but may be subject to a little bit of change.
THE COURT: Okay. All right. And again, this is not meant to steal the committee's thunder on these. These are my large-scale concerns, okay?
MS. UETZ: Your Honor, can I just ask a question about the one before this?
THE COURT: Yes.
MS. UETZ: Just to clarify what you said or what I heard.
THE COURT: Sure.

MS. UETZ: For the benchmarks in the other cases the debtor has described in the disclosure statement, are you saying that the committee's sort of counter to that can go in in appendix A?

THE COURT: That was my thinking. I mean, we don't have --

MS. UETZ: Okay. That's what I thought --

THE COURT: We don't have to do it --

MS. UETZ: -- I heard you say.

THE COURT: -- that way.

MS. UETZ: I just wasn't certain.

THE COURT: But I'm assuming they have a different universe.

MR. WEISENBERG: Your Honor, we're going to have a lot to say about those charts.

THE COURT: Okay.

MS. UETZ: Okay. Thank you.

THE COURT: Okay. Appreciate it.

The most contentious disclosure statement I ever dealt with as a lawyer was PG&E 1. And there were 75 objections. And we got to the point where -- I'm not trying to be funny here. Judge Montali just said, for God's sake, put it in. If that's what they want, put it in, and we'll figure it out later.

So I'm not trying to make light of this, but there is

a point at which, if we're going to go down this road and we're going to take this seriously as a disclosure statement, where we know there is just a fundamental disagreement, there is nothing wrong with indicating what the basis of that disagreement is and what the other reality is, okay? And maybe -- well, we'll see where we end up. But I think that's a concept we can readily employ.

MS. UETZ: Your Honor. It reminds me of some of the CMC statements that we filed with this Court and the district court where we each have our own --

THE COURT: Yeah.

MS. UETZ: -- the debtor beliefs --

THE COURT: Well, and --

MS. UETZ: -- the insurers' beliefs --

THE COURT: And to that -- yeah. I mean, to that point, I think obviously updates on litigation -- and to the extent that the insurance litigation -- insurance coverage litigation, the description is not up to date in the disclosure statement, it should be up to date.

MS. UETZ: Of course.

THE COURT: Okay. There is also a motion by the committee, I think, to play a more prominent role there, right?

MS. UETZ: That's the understatement of the day, Your Honor.

THE COURT: Okay. S

MS. UETZ: Forgive me but --

THE COURT: All right. Well --

MS. UETZ: I couldn't resist.

THE COURT: I'll forgive myself for understanding that one. Okay. Thank you.

Did you want -- did you want to say something? I'm sorry.

MR. WEISENBERG: Your Honor, I -- no. I was going to say yes to your question.

THE COURT: Yeah.

MR. WEISENBERG: And we'll wait to address all the --

THE COURT: I appreciate it. Okay. Thank you.

I think to the extent that there are particular assets that the committee would identify as, for lack of a better word, pursuable, I think either they can identify those and/or the debtor can say we have chosen not to pursue A, B, C, or D because. And there may be perfectly good reasons why in the debtor's mind, okay?

To a similar end, there is a reservation of rights for a potential avoiding powers causes of action. I think to the extent you are aware of any of those with any particularity, they ought to be described. If you're not aware of them with particularity, you can say so. Maybe the committee is. And that could be another point of disagreement.

We talked about this before, but the general concept

of what's going to be available from the debtor's side, including the churches and other, for lack of a better word, entities within the diocese frame, I think that some explanation of what the debtor's principle is that's guiding what's being contributed and what's contributable and what isn't, not -- and again, not that we're all going to agree on the numbers at this point. We're certainly not. But I think a better understanding of where the debtor is coming from and what's the principle guiding that I think is going to be very helpful, okay?

I know there's a disclosure of the transfer of the cathedral property, but you might want to include some explanation about why. I mean, there's -- it's a fairly significant amount of debt. Maybe in the diocese's mind it's completely awash and no harm, no foul. But if you wanted to describe that, my sense is the committee is going to take a different view of that. And we might as well -- might as well sharpen that up a little bit.

I want to let -- I had some confusion myself about some of the logistics, particularly the litigation option. I think really the committee is probably more all over that than I am. I think my concerns are probably relatively -- they're not as precise, so I'll let them address those. Although I will agree that I got a little lost in the weeds there too in terms of what someone's going to end up with and what's

offsetting against what. But I'll let Mr. Weisenberg and others present that and try to -- I'll try to clarify it in my own head. But it struck me that needed a little bit of help in terms of the explanation.

MS. UETZ: May I make a comment, your Honor?

THE COURT: Yeah, of course.

MS. UETZ: In terms of the objection concerning specifically the offset --

THE COURT: Yeah.

MS. UETZ: -- we've talked with at least some of the insurers during the break. And we expect to be able to resolve that hopefully to the satisfaction of the --

THE COURT: That's a language issue or something else?

MS. UETZ: Probably by withdrawing that offending offset provision.

THE COURT: Okay.

MS. UETZ: So I just want to preview that. And we're going to be having hopefully some discussion about that.

THE COURT: Okay.

MS. UETZ: Almost, like, put a pin in it. But --

THE COURT: That's okay.

MS. UETZ: It'll hopefully not be of the pin for very long.

THE COURT: Okay. So those are in a very big picture my thoughts about where I know we're going to need a little

help here, okay? And that's not to take any of the thunder out of Mr. Weisberg's presentation. But that's just -- as somebody who has not lived with this as much as you guys have, this case and this document, those are my thoughts.

So do you want to come on up and kick us off here?

MR. WEISENBERG: Thank you, Your Honor. Brent Weisberg on behalf of the committee.

Your Honor, we would suggest to proceed differently.

THE COURT: Okay.

MR. WEISENBERG: And it's consistent with the mantra that we've said many times today, which is there are gating issues that this Court needs to decide.

THE COURT: Okay.

MR. WEISENBERG: And if ultimately you agree with us, then there is no sense moving forward.

The easiest two examples, although easily solvable admittedly, is the definition of a release and exculpated party. It was not hyperbole, Your Honor, when we said if you read the release --

THE COURT: Right, as that --

MR. WEISENBERG: -- as written --

THE COURT: Yeah.

MR. WEISENBERG: -- the San Francisco Archdiocese will be released and the Holy See will be released. I suspect that is not what the debtor intended, and so they need to fix that,

okay?

With exculpation, it's a little more challenging. Your Honor. There is a Ninth Circuit decision which provides that parties who are integral in the plan promulgation process are entitled to an exculpation. Yet the debtor lists four or five entities, their brothers, sisters and aunts, all of whom are entitled to an exculpation. That is inconsistent with Ninth Circuit law. And so as drafted, the plan cannot be confirmed.

THE COURT: Okay. Now because these things can be a moving target and fixable, is your request that I address that in terms of what I believe my answer would be or something else?

MR. WEISENBERG: Your Honor, again, we want to be constructive.

THE COURT: Well, I appreciate that.

MR. WEISENBERG: And so --

THE COURT: That's why I'm asking in the same spirit.

MR. WEISENBERG: Yeah. And if Your Honor agrees with us and says I would like the debtor do this, that, and the other thing, of course, we'd like to see them do that now.

THE COURT: Okay.

MR. WEISENBERG: I think the trickier piece, Your Honor, and I think you and I may have been talking over one another, is when we're talking about the liquidation analysis.

I think there's two issues there. There's not just a disclosure issue, which is the debtor believes it does not need to contribute these assets because. The other issue, the more fundamental issue, is we don't believe the debtor has a right to make that decision.

Like we said before, this is a fundamental protection, in fact, one of the only protections that a group of creditors who doesn't agree to a plan has. And under the debtor's worldview, they can pick and choose how that analysis is done. And that just can't be the intent of the drafters. The intent of the drafters provided two vital protections to make sure that creditors who did not consent to a plan were nonetheless protected. The absolute priority rule, which we understand also, the debtor argues we're a nonprofit, that does not govern us, and the hypothetical liquidation test.

And so if the debtor is permitted to say you can never compel us to sell our churches because that would be a First Amendment violation, it obviously greatly skews what are the assets of the estate. In turn, it greatly skews what's fair and equitable. And so we need Your Honor to give us guidance today or before the disclosure statement could ever be approved about whether that liquidation analysis is accurate, because if it's not, creditors are going to pick up the disclosure statement and say wow, I'm doing better than if this were liquidated. We don't believe that's the case. We believe that

Your Honor needs to determine what is and is not assets of the estate.

THE COURT: Can I ask you a question? I think I know what the answer is, but you're going to help me out. Could I find both that the debtor could not be forced to sell all the churches and the plan isn't fair and equitable?

MR. WEISENBERG: Yes.

THE COURT: Okay. I mean, that's where I'm kind of headed here, okay? Because look, it's a hypothetical test. And there's a point at which -- can we make them sell this church? Maybe not. Should we be in a Chapter 11 and confirming a plan? Maybe not. Makes sense?

MR. WEISENBERG: It does, Your Honor. But I think the quibble I would have with your analysis is if we move forward in that paradigm, it makes it easier for you to find that the plan is fair and equitable because we're not using an accurate liquidation test. What we're arguing is on its face, this plan fails that test.

If we go your route, there's a lot more subjectivity as to whether the plan is fair and equitable because they may satisfy that test on its face because you've determined, okay, I'll agree with you guys, for the time being, you can never be compelled to sell your churches. The churches -- conservatively, the real property 400 to 700 million dollars, Your Honor. Okay? This is a billion-dollar real estate

enterprise.

Again, getting back to the intent of the drafters of the code, it cannot be the intent that an entity rich in real estate, arguably poor in cash, can get away with paying pennies on the dollar and saying -- folding their arms and saying you can't compel me to sell my real estate. And, Your Honor, no one's saying that you have to. All you have to do is say I cannot confirm this plan. You're not -- no one is asking you to compel them to sell churches.

And again, like Your Honor just said, it is a hypothetical test. The Boy Scouts court recognized that.

THE COURT: And would I be wrong in your mind to say if there's a limiting principle here, the debtor needs to tell us what it is, and we can -- I can agree with it or not?

MR. WEISENBERG: I would love to hear, Your Honor, what the validity is. And I'd also like to --

THE COURT: Well, I would too. That's why --

MR. WEISENBERG: I would like --

THE COURT: That's what I'm asking for.

MR. WEISENBERG: Yeah. But I'd also like the ability to challenge their assertions.

THE COURT: Of course.

MR. WEISENBERG: We know -- listen, we know what the assertion is going to be.

THE COURT: Yeah.

MR. WEISENBERG: The assertion is going to be you violate my First Amendment right by compelling me to sell churches.

THE COURT: Yeah. But my --

MR. WEISENBERG: It is a hypothetical test.

THE COURT: Okay.

MR. WEISENBERG: It can never happen.

THE COURT: Okay. But my point is, for disclosure statement purposes, is it enough for them to articulate whatever that basis is and then we argue about that at confirmation?

MR. WEISENBERG: I don't think so, Your Honor.

THE COURT: Okay.

MR. WEISENBERG: Again, I think you are skewing a creditors' view of the fairness of the plan even with descriptions that say the debtor asserts this, the committee asserts this. I think that's very different from providing an accurate liquidation analysis, which a creditor is entitled to, where they can look at the plan, look what they're receiving, and compare it to a Chapter 7.

THE COURT: Okay. Let me give you another version of it, see if this makes any more sense. They could file -- they could put together liquidation analysis says look, but for our arguments re the First Amendment and we can't be liquidated, the value of the real estate minus any existing debt is X. The

debtor's position is they'll never be -- they will never be compelled to do that, but just so if you want a number, here's a number. But there will be a disagreement at confirmation about what's fair and equitable and what is required of an entity in this scenario.

MR. WEISENBERG: I'm not sure that solves our problem, Your Honor, for the reasons we've been explaining, which is if ultimately we are correct at plan confirmation, what have we achieved? We --

THE COURT: Well, we know we're not going to confirm a plan.

MR. WEISENBERG: Right.

THE COURT: I think, right?

MR. WEISENBERG: Well, that's correct.

THE COURT: Okay.

MR. WEISENBERG: But we haven't addressed other gating issues, right, which is through the plan, Your Honor, the debtor essentially seeks to gloss over the most meaningful issues of this case, what are its assets, what are its liabilities, okay? We have complaints on file and a motion on file to get those answers. If we go the plan route and you do not hold that it's confirmable for any number of reasons, but right now for our dialog it's because the plan does not comport with the Chapter 7 liquidation, we don't have any answers to those questions.

And so isn't it better now in the same way you want to address the third-party release issue to know the rules of the game so that when a creditor picks it up, they have an accurate analysis? That's what we're afraid of, is you could punt any issue down the road, but is it actually economical?

THE COURT: Well, to me -- I'm not trying to -- I'm not trying to argue with you. But there's a difference in punting and if there is a scenario in which some debtors cannot be compelled ultimately to do the thing that is the test. You could say the test is this, this is the number. Just so you know, if this were any other kind of case, it's 700 million dollars. The debtor contends that it will never be in that position. And it offers as a principled answer to that question that the following is available and the following isn't available. I mean, to me, that's not punting the question. That's articulating what the difference is in the opinions between your side and their side.

MR. WEISENBERG: I was about to say, with all due respect, but I think we know in --

THE COURT: In my humble opinion. I know. I know.

MR. WEISENBERG: We know that as off limits.

THE COURT: No, it's never off limits. I get to say in my humble opinion.

MR. WEISENBERG: With all sincerity --

THE COURT: Yeah. That's --

MR. WEISENBERG: -- I still find that solution problematic because Your Honor can decide this as a matter of law. I don't think it's fact-based, okay? It's an interpretation of the Bankruptcy Code and the test. And so again, I would agree with you if there are factual issues that needed to be determined.

THE COURT: Okay. Then let me ask you this. Should I determine now that there's no First Amendment issue here and no liquidating a nonprofit? Should I determine that right now?

MR. WEISENBERG: I think you would need briefing, Your Honor. It's a very, very important point. As you can tell, we are making a lot of it because it's one of the fundamental protections. So humbly we'd suggest that we both be allowed to brief the issue.

THE COURT: Okay. Do you want to pause for a minute? Because this is a biggie. Okay. And let me hear from whoever -- one or more of the worthy counsel.

MS. UETZ: Your Honor, I think it's going to be Mr. Moore and Mr. Lee --

THE COURT: Okay.

MS. UETZ: -- if it is okay with the Court.

THE COURT: I don't mind. Mr. Weisenberg, are you okay with that?

MR. WEISENBERG: Of course, Your Honor.

THE COURT: Okay. Can we start with some of the

less -- well, maybe the less contentious matters, the language of the release and the exculpation?

MR. MOORE: Thank you, Your Honor. Mark Moore on behalf of RCBO.

And I'm going to defer to Mr. Lee as we get into arguments about what is patently unconfirmable versus what isn't because that was going to be how we kind of broke this up.

THE COURT: Okay.

MR. MOORE: I do think that the Court has already somewhat solved both of these issues. And by both I mean the hypothetical liquidation analysis test, whatever you want to call it, and the releases because we've already heard the Court say that we need more precision, frankly, on who's getting exculpated and why, who's getting released and why --

THE COURT: Yeah.

MR. MOORE: -- what the implications of those things would be. And so we hear that. And we will make those alterations --

THE COURT: Okay.

MR. MOORE: -- in both the executive summary and in our FAQ-like formulation.

THE COURT: All right. Do you have any doubt about what the tension points are?

MR. MOORE: No, Your Honor.

THE COURT: You've heard it.

MR. MOORE: and I think we can be absolutely certain that we didn't intend to provide for a release of the Archdiocese of San Francisco, for example.

THE COURT: Okay. All right.

MR. MOORE: And that kind of illustrates why we may need a little bit more precision.

THE COURT: Montali would be so upset if you did.

MR. MOORE: Well --

THE COURT: He'd have nothing to do.

MR. MOORE: I think you'd have a lot more lawyers in the room probably. So that's just one example of how that issue can be resolved through more disclosure and more precision.

THE COURT: Yeah. But I agree that's a now issue. You do too, right?

MR. MOORE: I'm sorry?

THE COURT: That's a now issue, let's fix that now, right?

MR. MOORE: In the disclosure statement, yeah.

THE COURT: Yes.

MR. MOORE: Absolutely, Your Honor.

THE COURT: Yes.

MR. MOORE: The second issue, to the extent that we need to talk about what the argument is, I'm going to defer to

Mr. Lee. But I think that the Court actually paved the way for the resolution of that issue as well, because the Court already indicated that we need to provide you with the why, the why of the debtor's, for lack of a better way to put it, business judgment in proposing the plan and putting out what is conservatively, we think about 160 million dollars, maybe 150 million dollars from the debtor alone. That's not pennies on the dollar. That's a significant and meaningful contribution.

And you've already said that we need to provide the why of that. How did we get to those numbers? What do we believe is or is not to be included and why? And we hear you. That is something that we can do in a revision to the disclosure statement.

THE COURT: And I'm not trying to be cynical when I say this. I don't know what's the chicken and what's the egg here between we think this is fair and we think the claims are worth this much.

MR. MOORE: Absolutely.

THE COURT: I don't know which -- I don't know where you're starting, if you're starting with the claims analysis or you're starting with what you think is available, and those are just magically syncing up.

MR. MOORE: Well, I think --

THE COURT: I don't mean -- that sounded way more cynical than I meant it to sound.

MR. MOORE: I think that it's appropriate in the context of your prior comments where you said we need to understand where you start, debtor, because you are the plan proponent.

THE COURT: Yep.

MR. MOORE: And you need to provide a little bit more information about that --

THE COURT: Yeah.

MR. MOORE: -- about how you get there, why you get there, what the arguments are, which we can do.

I think the Court has also given the committee an opportunity, and we've agreed to it, to provide their view and provide their appendix A or their committee letter or whatever you want to describe it, which is where if they believe that there's real estate that should be available that's worth 400 to 700 million dollars, they can say that and they can say why, and they can say what they rely on for that. I think that the Court has already given kind of that link that maybe solves that problem.

But then finally, Your Honor, and this is where Mr. Lee can maybe take over for me, these are ultimately confirmation issues. These are ultimately your discretion to approve or not approve the plan if we get to the point where claimants vote it down. Where we are right now, Your Honor, is that we don't actually know what claimants believe. We know

what counsel says that they'll probably believe, but we don't really know. And we do believe that the disclosure statement, as directed to be amended by you, will provide them with a meaningful opportunity to tell us. And at that point, we'll be much more informed about what they think about all of this.

And it, frankly, sounds a little bit like the committee saying, well, they may think that this is a good idea and that's helpful or it's not. But ultimately, what you're describing is a confirmation issue where the Court is going to have to make a decision.

THE COURT: How do you react to the suggestion that we maybe brief this question of whether you could be compelled to sell all assets and possibly liquidate, for lack of a better word.

MR. MOORE: Your Honor, I think it's part and parcel of what the Court will ultimately determine in confirmation. So we're very much aware that that is going to be a contested legal issue. I'm not sure that it should be, but I think that the time for briefing of that will come. I don't think the time for briefing for that is now.

THE COURT: So help me out here. I think I know the answer to this. Just read from the language of the Code, I think Mr. Weisenberg is not wrong that there is some very direct language about the best interest tests. It's a big deal to protect creditors. And your argument is that there's a

superseding principle here or because it's a hypothetical test, even if we gave you a number, it would be useful only in some sort of fair-and-equitable context that's arguably different and must be adjudicated as part of a plan or something -- well, choose either of those or both or more. So tell me how this plays out for you.

MR. MOORE: Your Honor, hold on.

THE COURT: If you guys want to -- if you want to switch up here, feel free.

MR. MOORE: Okay. And this was actually going to be part of the second (indiscernible) --

THE COURT: Okay.

MR. MOORE: So I'm going to defer to Mr. Lee.

THE COURT: Yeah. Sure, sure, sure. Okay.

MR. MOORE: Thank you.

THE COURT: Okay. My question makes sense?

MR. LEE: Matt Lee for the debtor. Can you repeat it, Your Honor? I'm sorry.

THE COURT: Yeah. What I'm being told is, look, this is a gating issue because 1129(a) -- I forget which now. Maybe (10).

MR. LEE: (7).

THE COURT: (7)? Thank you. Says, look, it is an absolute requirement that one demonstrate that the confirmation is in the best interest of the creditors because they are doing

at least as well under confirmation as they would under a under liquidation. So there aren't any off ramps built into that per se.

But you could tell me any number of different things. You could tell me, well, there's a superseding issue here, which is that we can't be liquidated under applicable nonbankruptcy law. And I need to be respectful of that and play that into the bankruptcy analysis. Or because it's a hypothetical test, all you really need to do, you could show that in the abstract. Okay, it's 700 million. Who cares. Doesn't matter. It can't be done. So it becomes a fair-and-equitable test that we have to deal with at confirmation and not before.

Those are my -- those are two ideas for how you might think about that, but you may have others.

MR. LEE: Your questions and your ideas make sense and are clear. May I start with a clinical discussion of what 1129(a)(7) says?

THE COURT: I'm not sure I've heard one before, so I guess I'm looking forward to that.

MR. LEE: I hope "clinical" is the right adjective.

THE COURT: Is this from personal experience or --

MR. LEE: Going to claim privilege on that.

THE COURT: Okay.

MR. LEE: 1129(a)(7)(A) gives the debtor an either-or

proposition for satisfying it.

THE COURT: Uh-huh.

MR. LEE: The first of the either-or, the first option, is that all impaired classes vote in favor of the plan.

THE COURT: Um-hum.

MR. LEE: The second option, if not all impaired classes vote in favor of the plan, then you have to satisfy the best-interest-of-creditors test.

THE COURT: Or for a dissenting class.

MR. LEE: Correct.

THE COURT: Okay.

MR. LEE: Yes. Because we're at the disclosure-statement phase of the case --

THE COURT: Um-hum.

MR. LEE: -- what matters now is not whether we can establish the 1129(a) requirements. What matters now is whether there's anything structural inherent in the fabric of the plan that makes it impossible to satisfy an -- to satisfy the 1129(a) requirements. And the committee has not argued and cannot argue that standing here today, it is impossible to confirm a plan under 1129(a)(7)(A)(i), that a holder of a claim in each class -- I'm sorry, that each class has accepted the plan, each impaired class has accepted the plan. We have four noninsider -- there are four noninsider classes in this plan, 3, 4, 5, and 6.

THE COURT: Um-hum.

MR. LEE: 3 is general unsecureds.

THE COURT: Um-hum.

MR. LEE: 4 is the abuse claimants.

THE COURT: Um-hum.

MR. LEE: Holders of abuse claims. 5 is the holders of unknown abuse claims.

THE COURT: Unknown. Unknown. Yeah. Uh-huh.

MR. LEE: And then 6 is the nonabuse litigation claims, so the slip-and-fall cases.

THE COURT: And those are just, they're riding through, right, basically?

MR. LEE: That we're establishing a reserve and then making insurance available for them.

THE COURT: Okay.

MR. LEE: Under the current draft of the plan.

THE COURT: Okay.

MR. LEE: So on the issue of whether the plan is patently unconfirmable, it is not patently unconfirmable because it is possible -- it is not impossible -- that all four of those impaired classes could vote to support the plan. The committee is going to swear up and down, and they have sworn up and down, there's no way class 4 is going to support the plan. But they don't know that. I don't know that. You don't know that.

THE COURT: Um-hum.

MR. LEE: Okay. So for purposes of the disclosure statement, we don't have to get in at all into whether our liquidation analysis is good, is bad, is complete, or is incomplete. As it is, because I want to be responsive to your question and responsive to the --

THE COURT: Um-hum.

MR. LEE: -- committee's arguments, because it is an important issue, obviously. In the event that we can't satisfy, that the debtor cannot satisfy 1129(a)(7)(A)(i), we have to go to (ii), the best interest of creditors test. And obviously, this is what the committee's objection focuses on. And the debtor did, in fact, do a liquidation analysis. Nobody's disputing that the debtor did a liquidation analysis. The question is whether, at this phase, the disclosure statement -- I mean, even then, the question is whether at this phase, does the disclosure statement accurately describe the liquidation analysis.

Now, to your point, there are assumptions in the liquidation analysis that we're making and legal arguments that we're relying on for including or excluding certain things that are not in the disclosure statement as it's currently drafted. And I think what you've heard from us today is that we are absolutely willing to put that basis into the disclosure statement and also to give the committee an opportunity to

respond.

So that's why I agree with Mr. Moore. On the subject of briefing, it's premature to brief that. Okay. That issue is going to get hashed out at the confirmation phase. It's not the debtor's burden to prove that its liquidation analysis is sound at the disclosure statement phase. And the reason for that is because it's still possible that all the impaired classes are going to vote to approve the plan. So we might not, in theory, ever even have to get to the liquidation analysis. If we have to get to the liquidation analysis, Congress has set up a process that you do that at confirmation.

You want to know what our disclosure statement is going to say about the legal basis for including or excluding certain items. Okay.

THE COURT: Um-hum.

MR. LEE: I'm happy to get to that. If there were a Chapter 7 liquidation in this case, committee is incorrect about what assets have to be included. The committee's position is that all of the debtor's assets have to be included. And that's simply not the law in the Ninth Circuit. There's a case that we cited in our reply brief.

THE COURT: Um-hum.

MR. LEE: Security Farms v. the Teamsters. I'm just going to call it Security Farms because the name of the union's quite long, and it appears twice in the Ninth Circuit decision.

So I'm just going to call it Security Farms. The Court, I mean, in that case, obviously it wasn't a religious institution. Okay. But it was about a labor organization that was heavily -- that is heavily regulated by the National Labor Relations Act.

THE COURT: Um-hum.

MR. LEE: And the court affirmed the exclusion of two key assets that the creditors wanted to be valued, liquidated, and the proceeds of the liquidation used to pay creditors. One was the collective bargaining rights of the union, and the other -- I'm sure you know this. It's a twenty-three year old case. But one was the collective bargaining rights of the union, and then the other was the right to collect future union dues. And what the court said was, look, those assets, even if liquidated, cannot be used to pay creditors because as a matter of federal law, they are dedicated for specific purposes. The benefits of the members. The benefits of the union itself. You can't include those, even in a hypothetical liquidation --

THE COURT: Um-hum.

MR. LEE: -- analysis. So I think maybe a corollary in our case would be -- I'll get to the First Amendment issues in a moment and the idea of selling church buildings, but I'll start with restricted funds.

THE COURT: Um-hum.

MR. LEE: Okay. That's a creature of California state

law. Somebody makes a gift to a church. It's earmarked for a specific purpose. That gift, the church can't take that money outside of bankruptcy. Outside of the insolvency context. The church can't take that gift and pay the light bill. Can't take that gift and buy the bishop a car. Can only use that money for the purpose that the donor has granted to it.

So in a hypothetical Chapter 7 liquidation, the same is true. That money is not available to pay creditors because the donor intent restricts it to that specific gift, okay, and the purpose that the donor made the gift.

So now we'll get into the First Amendment issue. Do you have any questions about that as --

THE COURT: Well, I mean, it's "property of the estate but", right?

MR. LEE: I think it's not property of the estate --

THE COURT: Not property of the estate?

MR. LEE: Because of the restricted nature of the asset, it's not available to pay creditors. Now, again, it doesn't mean that it's available to pay the light bill, but it means that, under California law, it's not available other than for the specific purpose --

THE COURT: Okay.

MR. LEE: -- that the donor made the gift for.

THE COURT: This is very helpful, but in some ways, the principle I have was the debtor should say why. You're

doing that now. The committee may not agree with you. And that's a fight -- I mean, my original conception of this is it's the debtor's obligation to provide a rationale for this, and it's the rationale that can be -- that can be reacted to and that can tee up the issue at confirmation so we know at -- and people want to take discovery about this, that's fine, and file briefs at that. My sense was that this was a definition question, a disclosure statement time, and an argument question at confirmation.

MR. LEE: We agree, Your Honor.

THE COURT: Okay. But I'm not trying to cut you off. It's helpful.

MR. LEE: I won't be cut off. I'll answer your question because I think this is kind of --

THE COURT: Yeah.

MR. LEE: -- where the discussion is leading.

THE COURT: Uh-huh.

MR. LEE: There's a supreme -- there's a body of Supreme Court case law that talks about what is the -- what are the limits and what are the -- what is the scope of the free exercise clause. What is the scope of the establishment clause. That's an understatement. There's tons of cases on that.

But specifically as to how you square religious missions with generally applicable, laws that apply to all of

us, there's one in particular that I want to highlight. It's a 2012 decision. It's called Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, Equal Employment Opportunity Commission.

THE COURT: Um-hum.

MR. LEE: It's a 2012 case. It was a unanimous decision of the court. And in that case, the court was dealing with the ministerial exception. I don't know if you're familiar with the case. I don't want to --

THE COURT: Not as much as you are. Go ahead.

MR. LEE: It just means you hadn't read it in the last two days. But so the case is dealing with the ministerial exception --

THE COURT: Um-hum.

MR. LEE: -- to the employment discrimination laws.

THE COURT: Um-hum.

MR. LEE: Discrimination and retaliation laws. In that case, it was a disability claim against a chapter of the Lutheran Church. And they had fired a minister for not following church protocols in dealing with her issue surrounding her disability. And so she sued for disability discrimination and retaliation. And the unanimous court said, no -- she was a minister. I'm sorry. She was an ordained minister who had taken vows and agreed to be bound by specific code and specific set of conduct.

THE COURT: Um-hum.

MR. LEE: And what the what the Court ultimately held -- I'll read a brief quote from it.

"Requiring a church to accept or retain an unwanted minister or punishing a church for failure to do so intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. And by imposing an unwanted minister, the state infringes the free exercise clause, which protects a religious groups right to shape its own faith and mission through its appointments. According to state, the power to determine which individuals will minister to the faithful also violates the establishment clause, which prohibits government involvement in such ecclesiastical decisions."

Now, the decision of when and where to establish a church, a Catholic Church, or to sell property with a church building on it is fundamental to the mission of the church, and it's fundamentally a decision left to the bishop of the diocese in which the church sits.

In the Catholic faith, the church building itself is of significance that is difficult to describe. I'm going to try and do it for you now. The church is where the faithful

experiences the Holy Trinity. You walk into the church. You are in the presence of God. You go get communion. You receive the body and blood of Christ. And the whole time you're there, you're surrounded by the Holy Spirit descended upon those gathered there. It is the mission. It is the church.

And yes, it's a piece of real estate. And yes, it's a piece of real estate on planet Earth in the State of California, United States of America. But to tell the bishop that he has to close X number of churches or that he has to close this church or he has to sell this church and combine that congregation with another congregation fundamentally infringes on the debtor's First Amendment rights and on the bishop's First Amendment rights. It substitutes church doctrine for the will of the Court. And our position is going to be that the Court can't do that. That the government can't do that.

Now, I want to say what we're not saying. We are not saying that this applies to every asset. We are not saying that it means we are exempt from any particular requirement of 1129. It does not mean that we can get around the fair-and-equitable point. We have to propose a plan that's fair and equitable.

The plan we've proposed -- and we could perhaps be more specific about this in the disclosure statement as well. But the plan that we have proposed depends upon the sale of

church real estate, vacant land, and land that is not vacant. It depends on it. It depends on it to make our plan payments, which are significant, 103 million to the survivors trust from the debtor, reorganized debtor, over the course of a four-year period after the effective date, including a 63-million-dollar payment on the effective date of the plan. How are we paying for that? We're taking out a fifty-five-million-dollar loan --

THE COURT: Um-hum.

MR. LEE: -- from the Roman Catholic Cemeteries of Oakland. And it's a real loan. We're going to give them mortgages on other properties, which then we're going to have to sell -- we're going to have to sell assets to pay that off. So not only are we paying 103 million to the survivors, we've got to pay back our lender and we've got to make all of our other payments.

THE COURT: Um-hum.

MR. LEE: We can consensually and the bishop can consensually and has acknowledged that he's willing to do that. He's willing to alienate church real estate in order to do right by the survivors. But as far as the 1129(a)(7) argument goes, and specifically 1129(a)(7)(A)(ii), our position is going to be that the we cannot be, in a hypothetical Chapter 7 liquidation, forced to sell buildings with churches on it because of the reason I described. Briefing on this will be much more eloquently stated --

THE COURT: Um-hum.

MR. LEE: -- than what you've heard today --

THE COURT: But your position is that for today's purpose, what I need to direct you to do is articulate exactly what these principles are so that at confirmation, with further briefing, we can have an intelligent argument.

MR. LEE: That's exactly what I'm saying, Your Honor.

THE COURT: Okay.

MR. LEE: I agree with you.

THE COURT: All right.

MR. LEE: And if I can add --

THE COURT: Yeah.

MR. LEE: -- none of this makes the plan patently unconfirmable sitting here today because of the clinical argument I made before.

THE COURT: No, but I do think -- I mean, I don't think it would be -- I may not make a ruling on this now. I don't know that it would necessarily be out of bounds to include in that presentation that it may be that if the Court is not convinced that the diocese has the winning legal position here, the plan isn't confirmable because I think at that point, we're just going to be -- we may be at the end of our rope, and it may be that Chapter 11 is not a viable concept anymore if I agree more with the committee than I agree with you.

MR. LEE: Or it may be that you order us to redo the liquidation analysis, including --

THE COURT: Okay. I mean, you tell me where the hard stop is on that. Okay.

MR. LEE: Well, if we're talking at confirmation, I think you have a number of options. I think for today's --

THE COURT: And look, I mean, the elephant in the room. You guys are going to talk. Right. And this is a highly iterative process. I have no illusions that this is the last-and-best offer at all, nor do you, nor does the committee, which is another reason why, if this is a moving target in that sense, it's one that ought to keep moving and not stop now, right, is what you're going to tell me?

MR. LEE: Yes, Your Honor.

THE COURT: Right? Okay. Got it. All set?

MR. LEE: On 1129(a)(7), yes.

THE COURT: Okay. Is there something else you want to talk about?

MR. LEE: They raised the number of patent --

THE COURT: Okay.

MR. LEE: -- unconfirmability issues. I'm happy to let you --

THE COURT: Well, I wanted to pause on this one and get everybody's input. Okay. But Mr. Weisenberg, it's your objection, so you get the last word. Okay.

MR. WEISENBERG: Thank you, Your Honor. Mr. Prol is going to take the last whack at it.

THE COURT: Okay. Thanks. Appreciate it.

MR. PROL: Thank you, Judge. Jeff Prol, Lowenstein Sandler, on behalf of the committee.

THE COURT: Um-hum.

MR. PROL: Just addressing this 1129(a)(7)(A) issue --

THE COURT: Um-hum.

MR. PROL: -- the debtor argues that the committee cannot argue that the plan is patently unconfirmable because they can potentially meet the Romanette (i). And we would argue in response to that, Your Honor, that what we're trying to do here is to eliminate a costly detour and frolic.

THE COURT: Yeah.

MR. PROL: And that if, ultimately, this Section 1129(a)(7)(A)(i) and (ii) cannot be met, we shouldn't spend the time or the money that the debtor says it doesn't have to go on a --

THE COURT: Um-hum.

MR. PROL: -- three, four, five, however-long-month junket it is to go through discovery --

THE COURT: Yeah.

MR. PROL: -- and a confirmation hearing and that this issue can be determined as a matter of law, either today or after subsequent briefing, before we go through that process.

Although they say the committee can't argue that they cannot meet Romanette (i), I will tell you that there are only two cases, two diocese cases, that have ever gone to solicitation of a plan without the consent of a committee. And both cases, the tort claim has voted more than ninety percent to reject the plan. So I think that that -- and we reference those cases in our brief. I think Your Honor can take judicial notice that it's very unlikely that this case will be any different than the only two cases in history that have proceeded down that course.

Secondly, with regard to Romanette (ii), the debtor conflates a hypothetical liquidation test with somehow Your Honor forcing them to sell churches. That's not the case. In a hypothetical liquidation test, the debtor has to show what the assets would bring in a liquidation. They don't have to sell them. The point is, and Your Honor made this in your opening comments, you don't have to confirm the plan. If they don't meet this test --

THE COURT: Um-hum.

MR. PROL: -- Your Honor cannot confirm the plan. And it has nothing to do with whether or not you can force them to sell churches. It has nothing to do with religious freedom. Okay. They ultimately don't have to sell churches. They can raise the money somehow else.

I haven't read the Security Farms case, but Mr. Lee's

recitation is that there were two key assets that were excluded, and I wrote this down, collective bargaining rights and the right to collect future dues. In a liquidation, I'm assuming the collective bargaining rights aren't worth anything because they go away, and future dues don't exist because they're not collected. And that could be the reason why the court didn't require them to value those particular assets. Completely different than valuing real estate in this case.

The terms of the argument with regard to religious freedom and the establishment clause, again, I don't think that that really weighs in in this case. So this is a hypothetical liquidation. It's not an actual liquidation. It doesn't prevent parishioners from continuing to worship in their churches or in other churches.

And I don't have the citation at hand, but I think we cited a case in our papers that stands for the proposition that even if churches are liquidated in a bankruptcy case, it's not the only church. There are other churches in the area. And we did cite in our papers the fact that the bishop here, pre-bankruptcy, did engage in a mission realignment process, where he himself acknowledged that the diocese, because of the economic condition, because of the survivor liabilities here, would have to close churches. And if that's necessary, it's necessary, but again, it's not impacted by the 1129(a)(7) test, which is only hypothetical. Okay. Thank you, Your Honor.

THE COURT: Thank you. Anything more on this?

No? Anybody else want to be heard?

No? Okay. Let me make a quasi-ruling. I'm very aware -- I appreciate everybody's concern about the status of the case now and the burn rate and the need to move forward. I also appreciate that, where you have an objection that really is, as a matter of law, not resolvable, one should not go through the exercise of soliciting a plan. This doesn't fall there for me for a couple reasons.

I think a disclosure statement time, the exercise is for the debtor to articulate a basis on which they believe they could confirm a plan and that plan is, in their belief, fair and equitable and meets the other 1129(a) requirements. I'm hearing loud and clear what the committee is saying about their views of the plan and what's happened in other situations where a plan's gone out without committee approval. I'm going to, notwithstanding that, focus more on teeing up the issues and framing the issues because I do think there is at least an argument that a hypothetical test is appropriate here.

And look, you can create two versions of a balance sheet. You can create one that says, okay, if we sold everything, here's the result. We don't think that's pertinent to anything. We think, based on the principles we're articulating in another portion of the disclosure statement, that it is a principled position that the result of a

liquidation would be X.

And then we will argue about that. And the committee will take a very different view of it. And having articulated that, I think the debtor should say something along the lines of there is a material risk that if the Court does not agree with the debtor about this limitation and the debtor is not able otherwise to make assets available and satisfy what the debtor -- what the committee will say is the hard-and-fast liquidation analysis. We may not be able to confirm a plan in this case. Period. End of story. The case may have to be dismissed. I think it's just about that stark.

And I'm not trying to be funny here. I also think because this is a highly iterative process and because maybe I'm kidding myself that this case has been especially constructive and cordial, and I think it has been, that the opportunity for further discussion here and to reach some accord is alive, even though I thoroughly expect the committee to say, we think this plan is unconfirmable. We think the values are not in line with reality. I get all that. It doesn't mean that there can't be further discussion and this is not a solvable problem. This is potentially a solvable problem.

So I think I'm going to ask the -- I'm going to require that the debtor articulate the basis for whatever limits it thinks it has with respect to assets available. And

if that includes assets that the debtor believes it may hold but are not property of the estate, okay, they can articulate that too. And the committee may say, well, it is property of the estate, and therefore, that precludes the State law analysis you want to provide us re the use of the property. We can have those fights.

But I think, for today's purposes, for disclosure statement purposes, this is a matter of definition, sharpening up the question and making sure we all understand what we're going to be talking about before and during confirmation so that everybody knows what the risks are. All right. Thank you very much for the very good arguments on that.

MR. PROL: Just to be clear on that --

THE COURT: Yeah.

MR. PROL: I'd like to understand and make sure that if the debtor is going to put in its liquidation analysis and its explanation, the committee will have an opportunity --

THE COURT: Absolutely.

MR. PROL: -- to criticize that --

THE COURT: Oh, absolutely.

MR. PROL: -- and put it in its own liquidation analysis.

THE COURT: Absolutely. I mean, why not. Right.

MR. PROL: Yeah. Yeah.

THE COURT: Absolutely right. Yeah.

MR. PROL: And Your Honor, we --

THE COURT: And that's beyond the briefing. I mean, that's just something that people can look at that. I get it.

MR. PROL: Okay. And Your Honor, just structurally, we've talked before about the committee attaching an appendix A on some of these issues.

THE COURT: Yeah.

MR. PROL: I think it would be much more helpful to the reader if it appeared in the text of the document, rather than having to have creditors have to read a separate document. So if the debtor puts in its liquidation analysis and explanation, we should be able to have a paragraph right below it that says, "the committee says".

THE COURT: Anybody have a reaction to that?

MS. UETZ: Yes. Your Honor, it's not uncommon for there to be a letter. An appendix. Something. But to have the debtor's disclosure statement confused with statements by the committee in the middle of it, we think, would actually worsen the disclosure. So keeping it in a separate appendix makes the most sense.

THE COURT: Well, if we do that, I think it's incumbent on the debtor to say at each one of those places--

MS. UETZ: Sure.

THE COURT: -- the committee vigorously disagrees, and their explanation is included at. Okay. And please read that

for a full understanding of the competing positions. Okay.

MS. UETZ: Noted.

THE COURT: I think that's what I want to do on that. Okay.

MS. UETZ: Thank you.

THE COURT: Okay. We have more to talk about.

MR. WEISENBERG: Brent Weisenberg on behalf of the committee. I think the next issue is somewhat related and --

THE COURT: By the way, anybody want to take a break? Been going about an hour and a half.

MS. UETZ: Everybody said yes.

THE COURT: Okay. All right. I didn't mean to cut you off. You want to tell us what it is so we can come back with anticipation?

MR. WEISENBERG: I've been voted down. I'm happy to take a break, Your Honor.

THE COURT: Okay. Thank you very much. All right. Thank you. How long, folks? Ten minutes? All right. Five-to-3? Okay. Thank you.

(Recess from 2:44 p.m., until 3:03 p.m.)

THE CLERK: Come to attention. The court is back in session.

THE COURT: Okay. Please be seated.

MR. WEISENBERG: Brent Weisenberg on behalf of the committee. Your Honor, there are a few insurance-specific

issues that we'd like to raise with you. And I'd like to ask Mr. Burns if he can address the Court.

THE COURT: You bet. You're a part of your objection, right?

MR. BURNS: Yes. Your Honor, some of them aren't spelled out in detail in the objection, but we alluded to having insurance issues with the plan. We mentioned specifically the set off.

THE COURT: Okay.

MR. BURNS: And the bad-faith issue. All right. But first, let me apologize, Your Honor. I am Tim Burns.

THE COURT: Yeah. Um-hum.

MR. BURNS: I am special insurance counsel --

THE COURT: Yep.

MR. BURNS: -- for the committee. And thank you.

THE COURT: Um-hum.

MR. BURNS: I'm going to start with something the Court said very early on today, which we --

THE COURT: Don't know when I've been quoted more frequently.

MR. BURNS: So the Court said that the provisions in the plan regarding the litigation option and the continuing rights of the insurers had been thought through with enormous detail. We would agree with that.

THE COURT: Yeah.

MR. BURNS: The plan is intent on making sure that the insurers are in no way prejudiced. But the plan, there's actually, as the Court knows, a five-and-a-half page section of the plan, 8.3, aimed at preserving nonsettling insurers' rights.

THE COURT: Right.

MR. BURNS: But the plan actually results in an array of insurance-law benefits for the insurers that prejudice the survivors' rights. I'm going to talk about five of what I'd call the most glaring of these. I'm cognizant that some of these probably fall within all three buckets that the Court pointed out this morning. Some are designed to aid the iterative process here --

THE COURT: Yeah.

MR. BURNS: -- of saying, we have a real problem with this. Some, in our view, go to confirmability.

So let me start. And I love roadmaps, so you just saw the brief introduction. I'm going to hit five points, and thankfully only five because of the concession this morning, or at least --

THE COURT: Okay.

MR. BURNS: -- the announcement of the design to fix the sixth problem that I would have pointed out here.

THE COURT: Okay.

MR. BURNS: Then I have a short conclusion.

So first, section 5.14 of the plan, and I point folks to -- I call them red pages 35 and 36 because the it's the docket page number, as opposed to the page number of the disclosure statement itself. So section 5.14 of the plan at red page 35 and 36 limits and abuse claim and from recovering from the trust or the nonsettling insurers more than the abuse claim judgment. Totally inconsistent with California law. This provision wipes out the survivors' rights with respect to claims-handling bad faith, and post-judgment bad faith, which is alive and well in California under the Hand v. Farmer Insurance Exchange decision.

It amounts, Your Honor, and to a silent release of the insurers from bad faith liability or certain types of bad faith liability. And we think that's actually confirmability issues. A Purdue issue. What you call the Purdue willingness issue we had an earlier argument this morning. So in order to recover for --

THE COURT: That's, in your view, compulsive and not be consensual?

MR. BURNS: Um-hum. And --

THE COURT: Okay. And that relates to the release?

MR. BURNS: Yes. So we ended up fixing this problem in Rockville Center. But in Rockville Center, we had settling insurers who were paying money. But Judge Glenn expressed a lot of concern about a very similar problem, the silent

releases --

THE COURT: Okay.

MR. BURNS: -- of direct claims against the insurers. And how I characterize it for myself is in order to recover debtor's insurance assets, the survivors are being compelled to release their direct -- their statutory bad faith, their bad faith, their other statutory claims against the insurers because they can't collect more than the abuse judgment. And these amounts would be on top of the abuse judgment. So that's number one.

THE COURT: Um-hum.

MR. BURNS: Second point is the slips (phonetic), and I want to be careful about this because I worry if I'm stuck with a plan like this, if I say too much now, I harm myself later. And so I just want to be very cognizant. But I do want to explain to the Court probably my biggest concern at the moment about the plan. The plan creates a huge risk for survivors with respect to holding the insurers liable for refusing to settle these cases in good faith.

This, Your Honor, is our greatest bargaining leverage in representing claimants in these cases and others, the ability, if an insurer doesn't settle reasonably, to hold the insurer liable in bad faith. Ideally, to preserve bad faith claims, bad faith refusal to settle claims in California, survivors would be required to make demands to the insurers.

The insurers would have to refuse. And then after both of those things happen, the diocese would have to trade its bad faith rights for a nonrecourse agreement. That's under the Hamilton decision under California law.

So in an ideal world, all of this would happen before discharge and release of the debtor because bad faith is based on the debtor being held potentially liable for more than policy limits. So ideally, it would happen before discharge and release, survivors' most powerful tool, and there's no process contemplated in this plan to allow us to do that.

I'm very hesitant. I realized that I live in an imperfect world, and I'm going to have to deal with plans. We represent five or six committees in California in these cases. I may have to end up dealing with plans that give me a less-than-ideal outcome. And so but it creates a risk that we shouldn't have with bad faith refusal to settle claims.

My third point, the third problem, and admittedly, this may fall in the iterative-process category. And trying to get clarification. Trying to get change here. But the plan takes away the trust's ability to pursue the insurance declaratory judgment action for the benefit of all claimants. Plan provision 8.3.13, and I'm quoting, "Any effort to collect from abuse insurance policies issued by the nonsettling insurers to satisfy an abuse claim after confirmation of the plan shall be set individually by the applicable holder."

There are many reasons that the trust would want to pursue the DJ. It's efficient. There are many questions that can be decided by declaration, ones that would conceivably apply to all. And we fear that this plan takes away that right. Admittedly, and Mr. Bair may talk about this when we talk about true disclosure statement issues, the language is a bit confusing at times about whether that's happening or not.

Fourth point. Mr. Weisenberg talked about how the diocese contribution is based on uninsured exposures. That's set out in plan section 9.8.4.1. And I'm not going to the set-off point, being the dioceses and the insurers are helpfully trying to fix that point. But there's another point.

Even though the contribution is based on uninsured exposure, a survivors' share of the contribution is held back, instead of paid like other claimants if they choose the litigation option. Or at least there's a huge concern at that because some of the language says that there's a little ambiguity because frankly, the plan could potentially be said to go both ways on this. So if we stop and think about that, why are we holding back these funds from folks who choose the litigation option?

The natural effect of making their receipt of the diocesan contribution wait until the litigation option is concluded is it discourages litigation. I don't know what their motive was, but I do know that in most of our plans

around the country that we've been working on, the diocesan contribution is also treated as covering uninsured exposures. But survivors would each get their portion of a diocesan contribution, whether they chose the litigation option or not. It increases the dioceses' and insurers' bargaining power.

Fifth point, Cumis counsel, and let me explain what that is, Your Honor. California law requires insurers to provide a policyholder independent counsel when the insurance company's defense under a reservation of rights creates a conflict in the sense that insurer-controlled counsel can steer the defense of the claim to noncovered aspects of the claim. That's a real concern. California weighed in on statute after weighing in on case law.

So this conflict doesn't disappear because the debtor is only nominally in the picture. The insurers' handpicked defense counsel could, for example, attempt to show that the diocese acted with actual intent to injure the abuse claimants in an effort to try to destroy coverage. So they've gotten rid of the check of Cumis counsel. The plan takes away independent counsel in these cases.

So those are the five what I call the most significant problems from an insurance standpoint at the moment. I'm taking folks at their word they're fixing the one that Mr. Weisenberg talked about.

THE COURT: Um-hum.

MR. BURNS: I want to say this. And Your Honor, I actually say it sadly and respectfully for all the parties' efforts at a plan. From an insurance standpoint, this nonconsensual plan, and we believe it will be nonconsensual, may be the predictable result of the dynamics of mediation in these cases. And I don't want to go into this particular mediation. I'm speaking mediation writ large in these cases.

The automatic stay, and I'm well aware of the benefits of the automatic stay, but the automatic stay takes away the survivors' bargaining power --

THE COURT: Um-hum.

MR. BURNS: -- not only with respect to the diocese, but also with respect to the insurance company. It takes away the courthouse steps, where these disputes are often resolved, when the courthouse steps of these underlying sexual abuse cases probably what's most needed. And we mediate for months, and the survivors are unhappy with the result because they're in a process where a large part of their bargaining power has been taken away.

And I would say there are ways to fix this. Lifting the stay with respect to test cases would start to give some of that bargaining leverage back. Get us a normal bargaining leverage. Allowing us to proceed. And we'll talk about this more on the 8th.

THE COURT: Um-hum.

MR. BURNS: I know, with the insurance adversary in an aggressive manner, would begin to give us some of the bargaining power back.

And with that, Your Honor, I thank you --

THE COURT: Thank you.

MR. BURNS: -- for the opportunity to address the Court and the parties --

THE COURT: Okay.

MR. BURNS: -- on these issues.

THE COURT: Appreciate it.

Okay. Who wants to tell me the debtor's version of this?

MS. UETZ: Your Honor, I have a brief comment, and then Mr. Moore is going to be responding.

THE COURT: Okay.

MS. UETZ: I think much of what we just heard was not in the objection. We were struggling to find the arguments. And so we're going to do our best to respond to the Court today based on Mr. Burns' presentation. And Mr. Moore is going to do that.

I would also note Ms. Ridley is in London. She's coming back. And with that, I'm going to yield to Mr. Moore, if that's okay.

THE COURT: Okay.

MS. UETZ: Thank you.

THE COURT: Um-hum. I guess one opening comment would be, and I'm not trying to critique Mr. Burns, but to the extent that maybe some of these comments were a little more precise than they were in the papers, it's probably less likely that I find that they're in a bucket-2 showstopper. I mean, these are things hopefully people can talk about. And so I mean -- so I mean, from Mr. Burns' standpoint, some of them are clarifications and some of them aren't. But I look forward to your comments.

MR. MOORE: Well, Your Honor, I think that's right. I would agree with you. And I would go a step further and say, I didn't actually hear a reference to the disclosure statement in that entire presentation.

THE COURT: Well, okay. But it describes a plan, and we're here to talk about that.

MR. MOORE: So but what you have, Your Honor, is that to the extent that they exist, they are confirmation issues.

And Ms. Uetz is correct. As we were listening to the presentation, we were scanning the committee's objection, and the first issue that he raised was the plan section 5.14. That doesn't appear in -- and it was about releases and then about potentially bad faith claims. Doesn't appear in section 2(a)(1) about releases or in section 2(b) about bad faith. So frankly, we don't really know how to respond to that issue.

But to the extent that it's a plan issue that they

believe impacts inadvertently or improperly the insurers' rights, then I think we can address that at confirmation. The same thing is basically --

THE COURT: Can I stop you for a sec and let me just see if this makes sense? To the extent that Mr. Burns would say this isn't just clarification. This plan is contra California statutes or long-standing public policy. It can't be confirmed. You could address -- you could have a conversation about that between now and January 8th.

MR. MOORE: Certainly, we could, Your Honor.

THE COURT: And certainly, if Mr. Burns believes that under those circumstances, the plan wouldn't be confirmable, he can make -- if you haven't resolved it, I can hear it again on the 8th. Maybe with a little bit more context. And that may be something that goes into the lengthening appendix A.

MR. MOORE: I think that's right, Your Honor. And I think that probably goes to all five of the points that Mr. Burns raised that --

THE COURT: Some of them sounded more clarifying than others. But you go ahead, and you tell me.

MR. MOORE: Well, I think that to the extent that clarification is needed, let's talk about the litigation option. The litigation option is intended to allow survivors that so elect to pursue litigation to monetize the insurance, for lack of a better word. To go after insurance proceeds, to

the extent that it exists. And the way that it works mechanically is that their claim will be scored by the claims abuse reviewer, and a reserve will be created for them of their pro rata distribution of then-available assets or later-available assets based on their scoring. That will not be provided to them at that time because we don't know the outcome of the litigation option.

There is a world in which there is an amount reserved for them for that claimant, but then a judgment comes back that says the survivor trusts -- the survivors' trust liability to that claimant is actually less than the reserve. And we built into the plan that if that happens, whether it's large or small, the remainder part or the gap will be redistributed to all of the other creditors.

But it can't be paid to them until the litigation option is resolved. Mechanically speaking, it's necessary to do it that way. And the intent is obviously not to discourage the litigation option because at that point the debtor, to use the phrase, has no dog in the fight. We're a nominal party only. We have made our contribution to the survivors' trust assets, and we're a nominal party only.

THE COURT: Would it be -- would it be anomalous to say, well, we'll just have a hold back?

MR. MOORE: Well, it's effectively the same thing. It's a reserved amount for that claimant.

THE COURT: Right, but I mean, could you pay sixty percent of that?

MR. MOORE: Well, I suppose you could, Your Honor, but then you run the risk of -- let's just use round numbers, and I'm not suggesting that these are right. But let's say that the trust reserves 500,000 dollars for a given claim.

THE COURT: Um-hum.

MR. MOORE: And then the litigation comes back and says, yes, the claim is worth however much that it's worth, and it could be millions in that circumstance. But it's all covered by insurance. And the insurer, they've made the point under 8.7, there's this offset issue that we're going to resolve. The insurer is directly liable to that claimant under this plan. Will make the payment directly to the claimant. Well, the claimant can't get paid twice for the same amount. So the rest of that number that was reserved for it, assuming that it's entirely allocated to the insurer, is redistributed to everyone else.

And so you could theoretically do a holdback on if you did some kind of a statistical analysis about what the likelihood is that you're going to come out, but you just won't know. But in the meantime, the claimant's protected because they're reserved for. And then the trust gets the option of if someone else is going to pay the claim and it's insured, then I can distribute the rest to all my other claimants.

Mechanically, I think that's the way that it has to work. And the offset issue kind of plays into that because who gets the credit. And so I don't know that you can say at both times you can't give an offset to the insurer, but then the trust pays first, if that makes sense.

THE COURT: Well, I mean, it's one way of looking at it. I'm not sure that's exhausting all the possibilities, so let me just -- I'm not going to rule on this now, obviously.

MR. MOORE: Sure. Sure.

THE COURT: But I think that if you can explore that with some flexibility, I think it's probably worth the conversation.

MR. MOORE: I understand, Your Honor.

THE COURT: Okay.

MR. MOORE: But fundamentally, the litigation option is clearly not intended to discourage litigation. It's actually intended to allow claimants to choose --

THE COURT: Right.

MR. MOORE: -- an individualized option to be able to increase their own recoveries using that insurance.

THE COURT: Yeah.

MR. MOORE: And to the Court's point, we did spend a significant amount of time trying to figure out how to make that work. And I think that's fundamental to both 3, which is that the plan takes away -- Mr. Burns's 3 -- the plan takes

away the trust's ability to pursue insurance declaratory judgment action for the benefit of all claimants, necessarily so, because our plan is an individualized litigation option. You don't have both at the same time. And but to the extent that they don't like that, then they can object to that on confirmation.

THE COURT: Well, and I'm not hearing that that's void as a matter of California statutes. The world would be a better place if it proceeded otherwise. All right.

MR. MOORE: From the committee's perspective, Your --

THE COURT: Yeah.

MR. MOORE: Yeah, absolutely. That's --

THE COURT: I mean, so it's not -- no one's going to tell me that X section of the insurance code says you can't do that.

MR. MOORE: I haven't heard it yet, Your Honor. Certainly not --

THE COURT: Okay.

MR. MOORE: -- seen in the briefing.

THE COURT: I got it.

MR. MOORE: But it is an individualized option to allow individual claimants to --

THE COURT: Yeah.

MR. MOORE: -- elect to proceed that direction. And if they elect not to proceed that direction, that's their

choice as well.

THE COURT: Yeah, but I guess all I'm -- I'm not going to resolve any of this today. I'm not hearing anything here that couldn't be part of a comprehensive discussion --

MR. MOORE: Absolutely. I think --

THE COURT: -- with Mr. Burns.

MR. MOORE: -- we're going to have that discussion --

THE COURT: And I think you should.

MR. MOORE: -- as we continue to refine and to clarify and to amplify some of these issues.

THE COURT: All right.

MR. MOORE: And Your Honor, I'm not going to address the automatic stay. We'll be back in a couple of weeks on that issue. I think that the last was that the policyholder must have independent counsel. Again, I think that's part of the discussion that we can have. To the extent that the plan says otherwise and they disagree, we can deal with that on confirmation. So to use the Court's phrase, I don't think any of these issues are showstoppers, to the extent that they're even issues at all.

THE COURT: Okay. I appreciate it.

Okay. Mr. Burns, do you want to clarify anything or --

MR. BURNS: (Indiscernible) Your Honor --

MR. PLEVIN: Your Honor, could I speak?

THE COURT: Yeah. Let Mr. Burns finish if he needs to.

Are you all set?

Okay. Come on up, Mr. Plevin.

MR. PLEVIN: Your Honor, Mark Plevin on behalf of continental. When I gave my appearance at the beginning of the hearing, I said I probably wouldn't be speaking. And that was based on the fact that the committee's disclosure statement objection said nothing about insurance.

THE COURT: Um-hum.

MR. PLEVIN: They were, I think, two sentences, and the word "bad faith" was in there. But Mr. Burns talked about statutes.

THE COURT: Um-hum.

MR. PLEVIN: He didn't identify any. He talked about the Hamilton case. I think he gave one other citation.

THE COURT: Um-hum.

MR. PLEVIN: There's none of this in their brief.

THE COURT: And I'm not deciding it now.

MR. PLEVIN: Well, that's good. I want to join the debtor's remarks by saying I think these are confirmation objections. What's clear is that Mr. Burns and the committee don't like the agreement that was reached in mediation --

THE COURT: Um-hum.

MR. PLEVIN: -- with the assistance of Judge Newsome

and Mr. Gallagher, between the insurers on the one hand and the debtor on the other hand.

THE COURT: Um-hum.

MR. PLEVIN: We don't think there's anything that's even a confirmation problem. Certainly, there's no disclosure problem here. And therefore, we would urge the Court to not rely on anything that was said today as a reason for not approving the disclosure statement. If we have to have a confirmation hearing about it, I look forward to seeing Mr. Burns' arguments in writing so we could respond --

THE COURT: Um-hum.

MR. PLEVIN: -- because I think some of what he said, if not a lot of what he said, is just wrong. And it's not reflective of California law. And I would welcome the opportunity to explain to the Court at the right time in a brief that responds to an objection by the committee why that's so.

THE COURT: Okay.

MR. PLEVIN: Thank you.

THE COURT: Um-hum. I think we're headed toward further consideration of an amended version of this document I'm guessing on January 8th. But if people want to reserve a different day, that's up to you. I don't want to -- if Mr. Burns wants to translate anything he said into something that he thinks is fundamentally contra California law and the plan

would be void were it confirmed in that fashion, I want to give him a chance to do that. And you can respond. Okay. If that's all doable before the 8th, great. I'm not hearing that now, but I'm not going to silence him on that.

Did you want to say something?

MS. UETZ: Just on that point, Your Honor, if I'm hearing implicit in what you're saying a suggestion that if Mr. Burns wants to brief that issue, just in terms of the calendar --

THE COURT: Yeah.

MS. UETZ: -- going from recall, but I think our response to some motions are due maybe December 30th. And then there's a reply date.

THE COURT: Yeah.

MS. UETZ: Maybe we use those same dates for that follow up.

THE COURT: Okay for me. And by the way, we put this on the 8th, look, it's a Wednesday. It's a 10:30 calendar. If, between now and the time we break, people have a better idea about when we ought to be taking chapter 2 of this, I'm all ears. Okay. We don't have to do it on the 8th. If a day here or there is helpful, that's a possibility. Okay.

MR. MOORE: I think before we get to the hearing, Judge, just looking at the holiday calendar and what they're going to need to do to modify documents --

THE COURT: Uh-huh.

MR. MOORE: -- and us review it and prepare our own piece, seems the 8th might be a little aggressive.

THE COURT: It might be, and that's okay.

MR. MOORE: But let's just put up (indiscernible) --

THE COURT: Well, you guys --

MR. MOORE: -- then we'll talk about it before the end of the day.

THE COURT: Whatever you guys agree with, within reason, I'll try to work with. Okay. The only thing. I'm fairly certain I'm leaving early on the 22nd. So the 22nd will be a tough day for me to do.

Is that right, Ms. Fan?

THE CLERK: Yes, Your Honor.

THE COURT: Okay. Unless you all want to come to Las Vegas and hear some BAP arguments. Okay.

MS. UETZ: Your Honor, just a clarification.

UNIDENTIFIED SPEAKER: Oh, sounds good.

UNIDENTIFIED SPEAKER: Yeah. No, I'm good with that.

MS. UETZ: Are you talking about the continuation on the disclosure statement hearing date, or are you talking about everything that's scheduled for the 8th. I just want to understand.

THE COURT: You guys tell me what works.

MS. UETZ: We should talk and then return.

THE COURT: Yes. You guys tell me what works. Okay. I mean, if you agree that we should have the hearing is currently set on the 8th on the 8th and have the disclosure statement hearings on some other day, I'll do my best to accommodate you. Okay. But you tell me.

MS. UETZ: Okay. Well, we should take the break and then talk and --

THE COURT: Yeah. So yeah, at an appropriate time. Let's do that. Okay.

MS. UETZ: Thanks.

THE COURT: Okay. Thanks.

MR. WEISENBERG: Your Honor, Brent Weisenberg on behalf of the committee. If it's okay with Your Honor, given the time, what I'd like to do is run through a list of issues that we haven't yet covered.

THE COURT: Um-hum.

MR. WEISENBERG: It sounds like we are going to have the opportunity after this hearing to work with the debtor to either refine the language --

THE COURT: Yep.

MR. WEISENBERG: -- or insert our differences.

THE COURT: Right.

MR. WEISENBERG: I think some of these issues may need to be called by you. And so that's why I want to get them out on the table. And then we can --

THE COURT: Okay. Is the hope I can call them today or that I call them at a further hearing?

MR. WEISENBERG: At some point. I just want to -- I just want to flag the issue for Your Honor.

THE COURT: That's fine. That's a good idea.

MR. WEISENBERG: Thank you.

THE COURT: Okay. Ms. Uetz, do you want to tell me it's a bad idea?

MS. UETZ: No, it's a good --

THE COURT: No?

MS. UETZ: -- idea. I just want to use the most time we can get with Your Honor today to try to call some of the issues and have (audio interference) but --

THE COURT: Okay. Well, look, if Mr. Weisenberg is saying, I'd rather talk than tell you this is a showstopper, I assume you're going to enjoy --

MS. UETZ: Very much, Your Honor.

THE COURT: -- that remark. Right. Okay. Thank you. Appreciate it.

MS. UETZ: But it also helps to get your direction.

THE COURT: And we got to get Ms. Albert home to watch Cal. Okay. That's important.

MS. ALBERT: Thank you, Your Honor.

THE COURT: You're welcome.

MR. WEISENBERG: Your Honor, in no particular order --

THE COURT: Um-hum.

MR. WEISENBERG: -- we believe that the disclosure statement is deficient or misleading in the following ways.

Number one, we identified for Your Honor the ninety-eight-million-dollar valuation that the debtor puts on sexual abuse claims.

THE COURT: Yeah.

MR. WEISENBERG: Yet there is no methodology or report or anything of the like to support that analysis.

Number two is --

THE COURT: Um-hum.

MR. WEISENBERG: -- with respect to each class of claims, we would submit, there needs to be an approximation of the number of claimants in that class. An approximation of the value of their claims. The reason for that, Your Honor, is I think the best example is the general unsecured creditor pool. The debtor may very well have more than sufficient funds to pay them in full.

THE COURT: Um-hum.

MR. WEISENBERG: But if it's choosing not to in order to create an impaired accepting class, then that's something we're entitled to argue at plan confirmation and so -- and by the way, that's not just for us. That's also for that class itself to understand its treatment as compared to the debtor's assets and the comparative treatment of other classes. So as a

matter of disclosure, we think that's required.

THE COURT: Well, can I stop you and see? I don't mean to get in the weeds on this, but it'd be one thing for the debtor to say, our position is that we're unable to pay these claims on X date because, and you can test that in discovery. But you think this should all be articulated more fully in the disclosure statement?

MR. WEISENBERG: Yes, Your Honor.

THE COURT: Okay. Okay.

MR. WEISENBERG: Again, just flagging the issue.

THE COURT: Um-hum.

MR. WEISENBERG: We would like to discuss with Your Honor the classification of the unknown abuse claimants.

THE COURT: Meaning?

MR. WEISENBERG: There's two issues with that classification, Your Honor. Number one. There's no estimation of how many claims may fall within that bucket. The estimated value of their claims. The amount. I'm sorry, Your Honor.

With respect to the unknown abuse claimant, the objection is more specific, which is as a matter of due process, we don't believe that the --

THE COURT: Yeah.

MR. WEISENBERG: -- future claims representative has sufficient time.

THE COURT: I know. I read that loud and clear.

MR. WEISENBERG: Right. Okay. Sorry.

THE COURT: No, no problem.

MR. WEISENBERG: What I was alluding to, Your Honor, was actually class 6, which is the nonabuse litigation claims. And for the same reason I just identified for you, understanding the treatment of that class is important. I heard today that the debtor would revise the disclosure statement to inform readers of the amount being put into the nonabuse litigation reserve. It still begs the question of whether there are any claimants in that class and if so what the value of their claims are so that a creditor could understand the treatment being proposed to them.

Your Honor, with respect to the executive summary, we think, again, it's misleading and also inaccurate in a few ways.

First, I think the most material issue we'd like to discuss with you is the use of the charts. We think that is entirely misleading and frankly, a dangerous road to go down. We spoke about the omitted claims valuation. The valuation of the Livermore property, that appears in several places. It's in the charts. It's also in the executive summary, standing alone, and also in the liquidation analysis or the comparison to the liquidation analysis.

I may ask Mr. Bair to better identify for the Court some of the issues that are raised by the litigation option and

the distribution option. There were instances where it was unclear the ramifications of a creditor doing so. There was also some confusion on our end about, even with respect to the litigation option, what a claimant having elected that option, what their rights would be. In certain instances, it seemed like he or she may be the claimant. In other places, it appeared the survivors' trust would be the claimant.

In addition, the plan -- or excuse me, the disclosure statement also alludes to the fact that the survivors' trustee can settle the claims with the insurers. It's entirely unclear how that settlement would impact a distribution option claimant or a litigation option claimant.

So if it's okay with Your Honor, let's talk about the charts.

THE COURT: Um-hum.

MR. WEISENBERG: And Your Honor is not the first person to be asked to address this. Judge Glenn spent considerable time speaking with the debtor about the charts. In fact, we attached to our objection the transcript of the hearing, where Judge Glenn found that the charts were highly misleading.

Number one, he was concerned by the fact that the information was only half there. The debtor admits that it is selectively chosen what cases to include. It is glaring that they have not chosen the San Diego diocese case or the Stockton

Diocese case or frankly, other cases, which would -- even if this was a comparison, I'm going to tell you why it's not to contextualize the return in this case to others. But Your Honor, let's start with this.

There is no comparison about what a return in one case should mean in another. The joke we made in our pleadings was the creditors in Sears don't look to Lord & Taylor and say, oh, my return is reasonable based upon how creditors were treated in that case. Why? Because we have different facts. We have different law. We have a different insurance program. Here, specifically, whether the statute of limitations applies is one of the most meaningful drivers to the value of a claim.

The cases or at least certain of the cases that are set forth in that chart were greatly impacted by the statute of limitations. Okay. And so when each of these creditor bodies in these cases was trying to determine what they believe would be fair and equitable in the construct of that case, they looked at the drivers I just spoke about. What is the -- what is the debtor's insurance policy? What are the severity of the claims? What is the state law? Then what are the debtor's assets in this particular case? What circuit are we in such that there may be informing decisions about any number of varying opinions about how to interpret the Bankruptcy Code?

There's also, again, the number of claims, and I think I referred to the different severity. And again, it can't be

understated that the statute of limitations has one of the most meaningful drivers. And so in Rockville Center, the judge ultimately instructed the debtor to not include the charts or if it was or if they were going to be included, there was going to need to be meaningful changes to what was being presented to creditors.

And again, Judge Glenn referenced the fact that there needs to be a reference to recoveries outside of bankruptcy. For example, this very diocese historically settled their claims for 1.1-million dollars. Adjusted for inflation, it's 1.7 million. Shouldn't creditors be informed about that recovery? It is very possible, if, unfortunately, we're unable to settle, and the debtor has said it's running out of cash, this case might be dismissed. And if so, creditors should understand what a recovery outside of bankruptcy should be.

But again, I don't want to go there, Your Honor, because I think it's highly misleading to make a creditor believe that the reasonableness of this recovery is based upon looking at other cases. There's no market for sexual abuse claims. There's nothing of the sort. And so we can't look to those other cases.

So we would submit, Your Honor, that the charge should be omitted. And if Your Honor thought there was some validity, then we would have extensive comments, not only to the selection of the cases, but we also have disagreements about

some of the facts embedded in the charts. For example, the debtor submits that a recovery in Syracuse may be X. We don't believe that's the recovery. Or the number of claims they used. And so we would like the opportunity to speak with the debtor because we don't agree with the valuations that even they've used.

THE COURT: I'm thinking I'm going to be noodling this a little bit and rereading Glenn's transcript between now and the 8th or so. Okay. But you're open to different possibilities here? I mean, omission of the charts is one. Heavy clarification is another, right?

MR. WEISENBERG: I don't think I have the luxury of deciding what I am and I'm not okay with. Yes, we would prefer the charge to be omitted.

THE COURT: Okay.

MR. WEISENBERG: If Your Honor ultimately says you want them in, then we will work with the debtor and work with Your Honor to make what we think is at least --

THE COURT: I appreciate it.

MR. WEISENBERG: -- a more realistic --

THE COURT: I appreciate it. Thank you.

MR. WEISENBERG: Do you want to allow the debtor to speak to this, Your Honor?

THE COURT: If it's okay, yeah.

MR. WEISENBERG: Of course.

THE COURT: I mean, I don't know if it's -- there may not be much conversation now but --

MR. WEISENBERG: I'm sorry. Before that, could I let Mr. Bair just make --

THE COURT: Yeah. Come on up.

MR. WEISENBERG: -- one or two points and then --

THE COURT: Sure, sure, sure.

MR. BAIR: Your Honor, we appreciate the opportunity to be able to respond without moving to another set of issues.

THE COURT: Well, I don't know that we are. Are we talking about the same issue?

MR. BAIR: Same issue.

THE COURT: Okay.

MR. BAIR: Your Honor, Jesse Bair, special insurance counsel --

THE COURT: Okay.

MR. BAIR: -- for the committee.

THE COURT: Okay.

MR. BAIR: I just wanted --

THE COURT: I mean, look, we've all been kind of open minded about who grabs the lectern here. Okay. So I --

MR. BAIR: Yes.

THE COURT: -- appreciate it. Thank you.

MR. BAIR: I just wanted to provide two illustrative examples. Mr. Weisenberg mentioned that we have some

disagreements with the facts that are embedded --

THE COURT: Yeah.

MR. BAIR: -- even within the chart as presented. So just for Your Court's -- for the Court's edification, I wanted to provide examples of that, just --

THE COURT: Okay.

MR. BAIR: -- to explain why we feel strongly about the charts --

THE COURT: Okay.

MR. BAIR: -- so that, for example, on page 12 of 86, the first chart --

THE COURT: Yep. Um-hum.

MR. BAIR: -- which talks about debtor contributions, for example, the debtor here is listed at about a hundred-million dollars, and that's money coming from the debtor and the parishes.

THE COURT: Yep.

MR. BAIR: And here, they say that, well, the parishes are part of the debtor, so it's all the debtor money. That's listed as a hundred million. But if you go down to the middle of the chart, Syracuse, New York, it's listed as around fifty-million dollars. Now, the debtor in parish contribution in Syracuse is a hundred-million dollars. And what I assume they're doing here is they're saying, well, in New York, the parishes are separately incorporated. So the debtor

contribution is fifty. And they just cut fifty off.

So this chart would look very different if you included the debtor contribution in other states and the parish money. And so I think we need to just be very careful here if we're going --

THE COURT: Okay.

MR. BAIR: -- to have these comparisons to really show the whole pool of assets because if you're going to say the hundred million here is debtor and parishes but we're just not going to include parish money in other jurisdictions, that can skew this chart quite substantially.

THE COURT: Okay. All right. Thank you.

MR. BAIR: So and then the other point is just in the second chart, when they're talking about average payments in other cases, we just need to be very careful about how they're counting claims because here in the debtor numbers, they're using 345 as the number. And they say here that they're deducting duplicate claims, for example. But when you do the math in these other cases, they're clearly leaving duplicate claims in. And so that's skewing those average claimant numbers.

And I'm not saying they're doing that on purpose necessarily. But if they're outsiders looking into a case, for example, in Rockville Center, they might say, oh, there's over 700 claims. But if you go through the claim objections and

count up all the claims that are left at the end, it's closer to 600 so -- and that can make --

THE COURT: Okay.

MR. BAIR: -- a big difference here. So I think we just need to be --

THE COURT: Okay.

MR. BAIR: -- careful with these charts.

THE COURT: Okay.

MR. BAIR: And I appreciate the time, Your Honor.

THE COURT: Sure.

MR. MOORE: Thank you, Your Honor. Mark Moore, on behalf of the RCBO.

THE COURT: Um-hum.

MR. MOORE: Your Honor, let's start with the charts, and let's start with contextualizing why they exist. One of the reasons that the debtor has proposed this plan is that we think it's a good plan. One of the reasons that we think it's a good plan is that we compare it to other similar diocesan religious order cases, and we come out to a place where we believe we are providing more, we being the debtor and related entities.

This is a point of comparison that is important to our creditors to be able to understand what we're giving them and how it compares to other cases. I understand that the committee doesn't like that because they want to go get

information about jury verdicts and use that instead, jury verdicts that we filed bankruptcy because we can't pay the multiplicity. I understand that they have concerns about the representation of different cases, whether you choose San Diego or Stockton or Rockville Center, which was confirmed last week, or not.

And again, I think the Court's already provided them with the method to put that into the world, which is their letter, their appendix, whatever it is that they want their position to be. They can say, no, the debtors are wrong, and they have the right to do that, as the Court has recognized. But this information is important about other cases. We have taken great care to try and delve through publicly available filings, other disclosure statements, other claim objections, and other cases to try and figure out how these things do compare to each other because it is a data point. It frames a point of reference. And it's a point of reference that's important for the debtor because it gets to what is a fair, ultimate outcome, whether the committee agrees with that or not.

Regarding the ninety-eight-million value of the abuse claims, that's not a value. That is a pledge of assets from the Diocese of Oakland, plus five-million dollars for the unknown abuse claims, which, if it's not paid, will be spilled back over into the survivors' trust. It's not a valuation.

And we've been very explicit in our plan that we've not attempted a valuation because these unliquidated tort claims are by nature unliquidated.

And so to say that we need to back into how we get to ninety-eight-million dollars, I think, number one, the Court's already said we need to make more disclosure about how we got there and why about what we're doing. So we will. But it's not a valuation, and it can't be construed as a valuation. To say that it is goes against the language of our plan.

About other asset valuation, Livermore, for example, again, we're not required to disclose in a disclosure statement precisely how we get to a valuation for that. It's a confirmation issue where we'll put on our evidence. I understand the committee may have a different view about what Livermore is worth. They can present that view if it's informed and show us how it's informed.

Other issues, Your Honor. Omitted information regarding claim value and number, again, we're happy to put in the number of claims that we think are in each class. That's relatively easy. I think that there may be three in class 6. Unknown claims, the tricky part about unknown claims is that they're unknown. And obviously we have described in some detail our claims review analysis and claims review process in the plan.

Regarding settlement information from previous to --

from the diocese, we actually did have that in our plan. It's on page 35 of 86. We clearly disclosed the prior settlements from what I think is called the initial legislation in the plan. You can find it there. It was fifty-six-million dollars for fifty-two claims, or maybe fifty-two-million dollars for fifty-six claims. Actually, I think I was right the first time.

Your Honor, but again, a lot of this is going to be stuff that we're going to talk about over the next couple of weeks, which I think is where the Court's going to direct us to go.

THE COURT: Okay.

MR. MOORE: A lot of it is going to be things that they want us to say differently that we're just not willing to say, because we do believe that it's true. We do believe that it's fair. We do believe that it's right. And it is our disclosure statement for our plan. If they want to say something different, we've already given them the opportunity to do that, and we welcome their submission. Obviously, we're going to need to take a look at that too, and we'll have the opportunity to do that.

Finally, I think the last thing that was mentioned was the classification of the unknown claims. Your Honor, this is something we've seen in multiple diocese bankruptcy cases, particularly where you now have an approved unknown claims

representative. That class is separate from the known class, but again, to the point that the Court disagrees with that somehow, again, that's a confirmation issue. If you don't like our classification, then you can tell us that whenever we come back, whenever it is that we come back.

But for right now, Your Honor, I think that all of these issues are either confirmation issues. They're either the committee's perspective, which it's able to communicate. But these are not issues that should prohibit the ultimate solicitation of the debtor's disclosure statement.

THE COURT: Well, I think that I'm somebody I don't have to order you guys to meet and confer. You're going to do that, and I think that --

MR. MOORE: We will do that, Your Honor.

THE COURT: And I think we begin there. And if you do not -- if the committee makes a comment or requests clarification or an amendment and you don't make it, that may prompt you to say, with more clarity, why you're taking the position you are. And that will either end up with me in the charts, maybe deciding that they're more trouble than they're worth, we'll see, or a lengthening exhibit A.

MR. MOORE: I understand, Your Honor. And coming out of this hearing, we've heard loud and clear that there's things that we need to clarify. There's things

THE COURT: Yeah.

MR. MOORE: -- we need to amplify.
THE COURT: Yep.
MR. MOORE: And there's a discussion that needs to be had.
THE COURT: Okay.
MR. MOORE: And we've already committed ourselves to eliminate some things or to clarify some things, and we're going to do that.
THE COURT: Okay.
MR. MOORE: We'll be doing that over the next days and weeks.
THE COURT: Yeah.
MR. MOORE: Hopefully we can resolve some of these issues.
THE COURT: Um-hum.
MR. MOORE: But as to use your term "showstoppers", we don't think that any of this stuff rises to that level because --
THE COURT: Okay.
MR. MOORE: -- ultimately, it's about information. It's about casting an informed vote. And that's what we want our creditors to do.
THE COURT: Okay. Thank you very much.
MR. WEISENBERG: Brent Weisenberg for the committee.
THE COURT: Um-hum.

MR. WEISENBERG: Your Honor, we hear you loud and clear with respect to how we should move forward. And so we would submit that there's no need to go through the litany of other issues. We understand how Your Honor wants us to try to solve it. We will.

THE COURT: Um-hum.

MR. WEISENBERG: We'll try. I don't know if we will. And so again, I don't think we need to argue any further about those issues. We're going to work through that with the debtor.

THE COURT: I appreciate it. Thank you.

MR. WEISENBERG: If you don't mind, we do need to speak with one another about hearing dates.

THE COURT: Shall we adjourn for a minute and let you guys talk about that?

MS. UETZ: Yes. It would be helpful, Your Honor, if I may, if we might get a preview from the Court on available dates, perhaps the week of the 13th and the 20th. That might help inform our discussion, if that's possible to hear that.

THE COURT: Well, sure. I mean, 22 through 24 are out.

MS. UETZ: Are no?

THE COURT: Yeah, are no.

MS. UETZ: Okay.

THE COURT: Yeah, I've got to be somewhere else.

MS. UETZ: Good. So does Mr. Lee.

THE COURT: Okay. Well, maybe you're arguing something in Las Vegas for all I know.

MS. UETZ: Sorry, I just outed Mr. Lee.

THE COURT: Yeah. Okay. That, I'm highly confident about.

Remind me, Ms. Fan, if anything else is blocked out at the moment.

THE CLERK: The week of the 13th is pretty open, Your Honor. We just have the calendars on the 15th. So Monday, Tuesday, Wednesday --

THE COURT: Okay.

THE CLERK: -- Thursday's open. And the week --

THE COURT: Okay.

THE CLERK: -- of the 20th, the 20th is a holiday, so we would only have the 21st.

THE COURT: Oh, right. Okay. So the 21st is open, but the rest of the week is not so great?

THE CLERK: Yes, Your Honor.

THE COURT: But we have a lot of -- I take it we're having the 13 calendar on the 9th?

THE CLERK: Yes, Your Honor.

THE COURT: Okay. So we have a lot of availability the week of the 13th. Everything but the Wednesday morning is pretty open.

MS. UETZ: That's helpful, Your Honor, because --
MR. MOORE: We're actually here in front of Judge Corley on the 16th.
THE COURT: Okay.
MR. MOORE: So if we could have it --
THE COURT: Yeah, you tell me.
MR. MOORE: -- on the 15th or the 17th --
THE COURT: Yeah.
MR. MOORE: -- that would eliminate some airfare.
MS. UETZ: Early afternoon on the 16th. So that's what --
THE COURT: I'm sorry.
MS. UETZ: -- I was going to talk with counsel about that.
THE COURT: Okay.
MS. UETZ: Maybe the break, and then we'll return with suggestions?
THE COURT: That's fine. Yeah. No, the afternoon of the 15th is fine for me. And I'll work with the rest of the week. Okay.
MS. UETZ: For the afternoon of 16th, is that good too?
THE COURT: Sure. Are you seeing Corley in the morning? Okay.
MS. UETZ: Back and hopefully squeeze it in. Well,

schedule it for --

THE COURT: A couple of years ago, we were on a panel presentation about bankruptcy appeals at all levels. And she was a brand new DJ, and she hadn't had a bankruptcy appeal yet. So she asked me to sort of take the laboring oar, which I tried to do. She's a delightful human being and wonderfully smart judge.

MS. UETZ: I've had one ever. That's it.

THE COURT: Oh, really? Okay. All right. Okay.

MS. UETZ: I was just telling somebody that yesterday.

THE COURT: Very good. All right. How long do you guys want?

MS. UETZ: Five, ten minutes, I think.

UNIDENTIFIED SPEAKER: Yeah.

MS. UETZ: Yeah.

THE COURT: All right. Come back about ten after.

MS. UETZ: Thanks so much.

(Recess from 3:56 p.m., until 4:15 p.m.)

THE CLERK: The court is back in session.

THE COURT: Okay. Are some dates others may try to pencil in or --

MS. UETZ: Yes, Your Honor.

THE COURT: Okay. Sure.

MS. UETZ: I can go? Okay.

THE COURT: Yeah.

MS. UETZ: Thanks. I'm sorry, are we on the record? Do I make an appearance? I'm just -- we are, right?

THE COURT: We should be.

MS. UETZ: Okay. I'm sorry. Ann Marie Uetz for the debtor, Foley & Lardner, Your Honor.

THE COURT: Okay. Thank you.

MS. UETZ: We are looking at the following schedule.

THE COURT: Uh-huh.

MS. UETZ: Backing off of Thursday, January 16th, for the hearing and the continuation of the disclosure statement.

THE COURT: Okay.

MS. UETZ: So backing off from that, January 14th, which is Tuesday, the debtor's reply to any objection. Friday, January 10, the committee objection. Friday, January 3rd, the debtor will file its amended disclosure statement. So I went backwards there.

THE COURT: Okay. Okay.

MS. UETZ: Two related items. One of them I just thought of. The appendix for the committee and what they might -- what they might attach, we didn't actually talk about that. I guess I would suggest it be with the objection.

MR. WEISENBERG: That's what I was going to suggest. Fine.

MS. UETZ: Cool.

THE COURT: That's fine.

MS. UETZ: Okay. See, we're all agreeing. So the appendix with the objection on --

THE COURT: Okay.

MS. UETZ: -- the 10th, and we talked about extending the solicitation period with a recognition and a commitment statement that neither the committee nor the insurers will file any plan through and including January 16th. And we'll address it again on that day when we're back in court.

THE COURT: Okay. Do you have in mind already how many days it takes you to get from approval to out-the-door?

MS. UETZ: This is where Mr. Moore is going to stand up.

THE COURT: All right.

MR. MOORE: Remind him of January 8th.

MS. UETZ: Oh, and --

THE COURT: We're not moving the 8th?

MS. UETZ: -- we're staying with January 8th.

THE COURT: Got it. To the extent we're filing things on the 14th, can we make that noon?

MS. UETZ: Yes, Your Honor.

THE COURT: Okay. Thanks.

MS. UETZ: Hundred percent.

THE COURT: Okay.

MS. UETZ: Thank you for --

THE COURT: Sure.

MS. UETZ: -- indulging us on that.

THE COURT: That's okay.

MR. MOORE: Your Honor, in the run up to filing the plan and disclosure statement, we talked a little bit to our claims noticing agent. They think that they can get it done in three business days.

THE COURT: Wow.

MR. MOORE: If it's over a weekend, it may be the following Monday or Tuesday. Because I think we just said was the 16th is a Thursday.

THE COURT: Okay.

MR. MOORE: So it may be as long as five business days. I'll have to discuss that with them --

THE COURT: Okay.

MR. MOORE: -- taking into account the weekend.

THE COURT: Okay.

MR. MOORE: But I think that that should work.

THE COURT: All right. Well, look, in the meantime, I'll at least give you some strong inclinations on the 8th about a whole bunch of things. And as I teased before, soliciting is one thing. Actually having the confirmation hearing is another. We can build in -- I'll hear everybody about how that ought to work. Okay.

MR. MOORE: That's why I stood, Your Honor, which is, I suspect we will not be able to agree on a timetable. And so

we'll likely need Your Honor to call.

THE COURT: We'll take it up, I promise. Okay. Anything else?

MR. MOORE: We'll take that up on the 16th. Is that right, Your Honor? You gave inclinations on things on the 8th and then be back.

THE COURT: Oral rulings.

MR. MOORE: Right. Of course.

THE COURT: Yeah.

MR. MOORE: Okay.

THE COURT: Okay.

MR. MOORE: Yeah.

MR. PLEVIN: Your Honor, Mark Plevin. Just a point of clarification because we weren't involved in the discussion.

THE COURT: Um-hum. Do you want to participate in some briefing?

MR. PLEVIN: No, no. Just what time the hearings are.

THE COURT: Are you sure?

MR. PLEVIN: I've got enough briefs to write, Your Honor.

THE COURT: Okay.

MR. PLEVIN: Just when the hearings will be on January the 16th.

THE COURT: Well, the 8th is already 2 o'clock et seq. Right.

UNIDENTIFIED SPEAKER: Yes, Your Honor.
THE COURT: And you guys, you're going to -- you need to go see Judge Corley in the morning on the 16th.
MS. UETZ: Correct.
THE COURT: So should we say 2, or is there a better time?
MR. MOORE: I think maybe more time.
MS. UETZ: I think the soonest we could start in the afternoon would be optimal. We'll be done with Judge Corley by noon, I would imagine. So maybe 1 o'clock start or whatever the --
THE COURT: All right. You want to -- I mean, 1:30, just to be --
MS. UETZ: 1:30 would be great.
THE COURT: -- build in a half hour? Okay.
MS. UETZ: Sure.
MR. PLEVIN: That's on the 16th?
THE COURT: Yes.
MR. PLEVIN: And then I had heard, I think, that the start of the hearing on January 8 had been moved back.
THE COURT: Well, I think we're doing it in the afternoon. We're not trying to compete with all the --
MR. PLEVIN: Okay. So --
THE COURT: -- business on the way. I understood it was 2. If somebody wants to tell me that's wrong, I'm all

ears.

THE CLERK: It's currently scheduled for 2 p.m., Your Honor.

THE COURT: Okay. Anybody need to change that or are we good?

MR. PLEVIN: I just wanted to know when to be where. Thank you, Your Honor.

THE COURT: Okay. All right. Anything else for the good of the order?

No? There's always one more thing.

No? All set? See you, guys.

MS. UETZ: Not today, Your Honor.

THE COURT: All right. Well, have a lovely holiday.

IN UNISON: Thank you, Your Honor.

THE COURT: Yeah, it was a pleasure, as always. Thank you so much. Okay. See you later.

(Whereupon these proceedings were concluded at 4:19 PM)

I N D E X

C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.

/s/ MICHAEL DRAKE, CER-513, CET-513

eScribers
7227 N. 16th Street, Suite #207
Phoenix, AZ 85020

Date: December 23, 2024

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